

RPTR MAAR

EDTR SECKMAN

TERRORISM AND THE VISA WAIVER PROGRAM

Thursday, December 10, 2015

House of Representatives,

Subcommittee on National Security,

joint with the

Subcommittee on Health Care, Benefits and

Administrative Rules,

Committee on Oversight and Government Reform,

Washington, D.C.

The subcommittees met, pursuant to call, at 10:09 a.m., in Room 2154, Rayburn House Office Building, Hon. Ron DeSantis [chairman of the Subcommittee on National Security] presiding.

Present: Representatives DeSantis, Jordan, Russell, Mulvaney, Mica, Walberg, Hice, Gowdy, Meadows, Walker, Carter, Chaffetz, Lynch, Cartwright, Norton, Lawrence, Lieu, Watson Coleman, Cooper, Lujan Grisham, and Cummings.

Mr. DeSantis. This Subcommittee on National Security and the Subcommittee on Health Care, Benefits, and Administrative Rules will come to order.

Without objection, the chair is authorized to declare a recess at any time.

The United States, our Western allies, and, indeed, the civilized world are facing a global jihad that is dedicated to the destruction of our way of life. While certain terrorist groups, such as ISIS, receive understandable attention, the global jihadist movement is not limited to members of ISIS. Indeed, the terrorists who massacred 13 Americans in California were dedicated to jihad before ISIS even rose to prominence.

To protect the American people, terrorists cannot be allowed to gain access to the United States. To gain entry into the United States, citizens of most countries must obtain visas issued at overseas embassies and consulates by the State Department following an in-person interview with the Department of State consular officer. An exception to this rule is the Visa Waiver Program. Established in 1986, the program allows foreign nationals of 38 countries to enter the United States as temporary, non-immigrant visitors for up to 90 days without having to obtain a visa or undergo an in-person interview at a U.S. consulate.

The terrorist attacks in Paris on November 13 demonstrated that the Visa Waiver Program represents a potential vulnerability for our country. Those terrorists killed nearly 130 people and

caused over 350 injuries. At least five of the attackers were French nationals, two of whom were living in Belgium, and one was a Belgium national. Nationals of both France and Belgium are able to enter the United States under the Visa Waiver Program.

Accordingly, at least six of the Paris attackers could have attempted to enter this country under the program. The Belgium neighborhood of Molenbeek, for example, is notorious for being a hotbed of Islamic jihadists. Known as jihad central, Molenbeek is a hellhole that is filled with Belgium national Islamic radicals who qualify to travel to the U.S. without a visa under the Visa Waiver Program.

And, of course, many Islamic jihadists in places such as Syria are actually Western passport holders who could then come to this country with those Western passports after fighting jihad in Syria and Iraq. This exposes the American people to the possibility that these militants, after receiving training and undergoing further radicalization in the hotbed of the jihad, could exploit the Visa Waiver Program and enter our country.

With this in mind, the U.S. must ensure that all appropriate safeguard are in place to ensure that the program cannot be exploited. A properly functioning biometric exit system is one of those safeguards. Biometric exit and overstay reporting was required as part of the Visa Waiver Permanent Program Act in 2007. Despite this, the U.S. does not have an exit system at our air, sea, and land ports of entry to track overstays as required as

part of the Visa Waiver Program.

In 2011, the former Commissioners of the 9/11 Commission concluded, quote, "The Department of Homeland Security properly supported by the Congress should complete as quickly as possible a biometric entry-exit screening system." As important as it is to know when foreign nationals arrive, it is also important to know when they leave. Full deployment of the biometric exit should be a high priority. Such a capability would have assisted law enforcement and intelligence officials in August and September of 2001 in conducting a search for two of the 9/11 hijackers that were in the United States on expired visas.

Instead of a biometric exit system, DHS has moved to implement a biographic exit system, despite the fact that former DHS Secretary Janet Napolitano told the GAO that she has no confidence in the current system. Even if a biometric exit system were implemented tomorrow, it is doubtful, though, that the administration would take the necessary action against the vast majority of visa violators. The Obama administration has circumvented duly-enacted immigration laws through memoranda and executive action. Under current law, overstaying a visa or violating its terms is sufficient to render a foreign national deportable. But now, pursuant to the administration's so-called priorities, only aliens who are found to have significantly abused the visa or Visa Waiver Programs are deportable. All too often, however, such offenders are only found after they have committed

crimes in this country. The administration has taken steps to water down the terrorism bars that render aliens inadmissible or deportable by broadening the exemption authorities and redefining what constitutes material support.

Finally, although the government may argue that even aliens entering under the Visa Waiver Program are subject to some level of background check, more stringent checks than the Visa Waiver Program applicants are subject to have their limitations. For example, they failed to prevent Tashfeen Malik, who, along with her husband, Syed Farook, killed 14 people in San Bernardino, California, last week before she entered the United States on a fiance(e) visa in July 2014. And this was supposed to be a rigorous examination.

This is not to say that Congress should attempt to protect the American people -- this is to say that Congress should attempt to protect American people from those who would come here to do us harm. In fact, the House has just passed legislation to address concerns related to the exploitation of both our refugee admission process and the Visa Waiver Program. We will continue to review other immigration vulnerabilities that impact our security. Today, as the House has passed the visa waiver legislation, we assess the mechanisms in place within the Visa Waiver Program that protect our national security and help identify returning foreign fighters and identify further steps that can be made to strengthen the Visa Waiver Program.

I thank our witnesses for their testimony today and look forward to examining issues related to impact of terrorism on the Visa Waiver Program and potential improvements to the program.

And, with that, I yield to the ranking member, Mr. Lynch.

[Prepared statement of Mr. DeSantis follows:]

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

Mr. Lynch. Thank you, Mr. Chairman.

I would also like to thank the witnesses for their willingness to appear before this committee and help us with our work. As recently noted by William McCants of the Brookings Institution and author of "The ISIS Apocalypse," the horrific terrorist attacks in Paris on November 13 evidenced a marked shift in the strategy of the Islamic State, also known as Daesh. By perpetrating a series of centrally planned and coordinated terrorist attacks against civilian targets in the West, the Islamic State has crossed some kind of Rubicon in the words of Mr. McCants and definitely shifted in their thinking about targeting their enemies.

This shift in strategy is even more concerning given the continued terrorist threat posed by foreign fighters returning from Iraq and Syria. According to the bipartisan report on foreign fighters released by the House Homeland Security Committee in September of this year, approximately 10 percent of so-called returnees seek to engage in terrorist activity and recruitment upon their return from conflict zones. This statistic took form in the United States in 2015 with the arrest of several American returnees on terrorist-related charges. These dangers are exponentially greater given the Islamic State's widespread use of social media as a global recruitment and radicalization tool.

The Islamic State has more than demonstrated its savagery

and willingness to expand its terrorist activities beyond its controlled territories in Iraq and Syria. And it is imperative that we continue to work together and take effective steps to enhance our national security against the threat of a homegrown terrorist attack.

Of course, just last week, we witnessed the tragic mass shooting in San Bernardino, California, the most devastating terrorist attack on U.S. soil since September 11 and one that the Islamic State has since praised in its daily online broadcast. So while we offer our prayers for the victims and their families, we also must take reasonable measures promptly to prevent this from happening again.

One area where we do have significant bipartisan agreement is the subject of today's hearing, the Visa Waiver Program, administered by the Department of Homeland Security in consultation with the State Department. Beginning in 1986, back in 1986, during the Reagan administration, the Visa Waiver Program was allowed -- has allowed foreign citizens from specified countries to enter the United States for the purpose of business or tourism for up to 90 days without a visa. The program reflects a security partnership between the U.S. and 38 participating countries.

By establishing minimum standards for acceptable travel, including machine-readable passport use, information sharing on lost or stolen passports via INTERPOL, the Visa Waiver Program



has also served to promote commerce and tourism in the United States. According to the Department of Homeland Security, in fiscal year 2014, the U.S. accepted more than 20 million Visa Waiver Program travelers, who spent an estimated \$84 billion on goods and services.

However, despite the economic benefits and security standards that stem from the Visa Waiver Program, its sheer size, traveler volume, and the continued threat of terrorist activity worldwide demand that we make every effort to strengthen that program. As reported by the Government Accountability Office in 2012, approximately 364,000 individuals traveled under the program in 2010 without verified approval from the program Electronic System for Travel Authorization. I would also note that the attacks on Paris involved the participation of several individuals with French and Belgium citizenship, and that Belgium federal prosecutors have indicated that coordination of the Paris plot may have extended to Budapest, Hungary. France, Belgium, and Hungary are all Visa Waiver Program countries.

The Department of Homeland Security has taken steps to enhance Visa Waiver Program security since November of 2014. Most recently, this month, the Obama administration announced that the Department of Homeland Security will modify the program's electronic travel authorization database to collect applicant information regarding past travel to conflict zones or terrorist safe-haven countries.

However, the administration itself has noted that more robust program security measures will require congressional authorization and approval. To this end, the House passed H.R. 158, the Visa Waiver Program Improvement Act, by a 407-to-19 vote on Tuesday. This bipartisan legislation, which I cosponsored, seeks to reform the Visa Waiver Program through stringent security and oversight requirements. Among various program enhancements, the bill would prohibit individuals who have traveled to Iraq, Syria, and Iran and other specified nations since March 1 of 2011 from entering the U.S., unless they first undergo biometric screening and interviews by U.S. officials and obtain a regular travel visa. The bill would also require the Department of Homeland Security to remove a country from the program if it does not fully vet or share information on citizens traveling to the U.S. who could pose a threat to national security.

Beginning of April 1, 2016, H.R. 158 would further mandate that all passports from Visa Waiver Program countries be machine-readable, electronic passports that are fraud-resistant and contain comprehensive biographic and biometric information as determined by the Department of Homeland Security. We must continue to work in a bipartisan manner to ensure that these and other program reforms become law.

Mr. Chairman, I look forward to the further discussion of this Visa Waiver Program with our witnesses as we examine any additional security measures proposed by Congress and the

administration to enhance program security.

I want to thank you. And I yield back the balance of my time.

[Prepared statement of Mr. Lynch follows:]

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

Mr. DeSantis. The gentleman yields back.

The chair now recognizes Mr. Jordan, the chairman of the Health Care, Benefits, and Administrative Rules Subcommittee.

Mr. Jordan. I thank the chairman. And I would just thank you for putting together this hearing today and would yield back. I just want to get to the witnesses' testimony and get on with the hearing. So thank you so much for this important hearing.

[Prepared statement of Mr. Jordan follows:]

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

Mr. DeSantis. Well, it is one of many things, I think, that, if you look, we have really three facets. One is dealing with terrorists overseas who are creating caliphate and have territory that they are in charge of. They can recruit. They can train. They can obviously cause a lot of damage there.

The second part is preventing people like that from coming into our country. This is just one part of that. I mean, the fact that Tashfeen Malik received a visa, she should not been allowed into this country. And we have to figure out a way to deal with that.

And the third, which we will probably be dealing with on this committee at some point, is how to deal with people who are radicalized here at home.

With that, I will yield to Mr. Cartwright for 5 minutes.

Mr. Cartwright. Thank you, Mr. Chairman.

And I also want to thank our witnesses for being here today. I think this is an important topic. We ought to engage in a bipartisan dry-eyed review of the situation.

And I want to start by clearing up a few misconceptions that some people may have about the Visa Waiver Program. The Visa Waiver Program permits citizens of 38 countries in Western Europe and other nations to travel in the U.S. without first obtaining a visa. But some have described the Visa Waiver Program as visa-free travel. And that is not quite correct. For example, a German citizen cannot grab their passport, arrive at a major

airport in Germany, buy a ticket, and hop a flight to Washington, D.C. It doesn't work that way. And we have an illustration that actually the Heritage Foundation created to show the extensive counterterrorism screening that every prospective Visa Waiver Program traveler has to undergo before successfully entering the U.S. You can see it up on the screen. You can see it is a very simple process.

You can follow along as I talk about it. A perspective Visa Waiver Program traveler has to go through a vetting process by the Department of Homeland Security. Travelers are required to complete an online security screening form prior to departing their country. The screening form includes biographic information, criminal background information, and any previous visa revocations. This information is continuously vetted against U.S. law enforcement and intelligence agency watch lists to determine if the traveler poses a risk. DHS also conducts extensive preflight screenings for air travelers, and it includes checking passenger airline reservation data against terrorist watch lists. In addition, DHS conducts pre-arrival screenings to vet passenger manifest data indicating who is on board against, again, the terrorist watch list. Once a Visa Waiver Program traveler arrives in the U.S., he or she must undergo an additional level of screening in the form of an in-person inspection at the port of entry by CBP, Customs and Border Patrol. The first inspection includes a validation of travel and identification

documents and the collection of biometric data, such as fingerprints and a photograph for first-time Visa Waiver Program travelers. Following this primary inspection, the VWP traveler must then submit to a thorough inspection of their physical staff, their bags, their documents, and their electronics.

No VWP traveler can be admitted to the U.S. without completing all security checks. And according to DHS, since 2008, almost 6,000 travelers have been denied travel to the U.S. under this program because of national security hits to one of the terror watch lists. In addition, nearly 166,000 more have been denied traveling here for using lost or stolen passports. So, as far as we know, terrorists are always looking for new ways to skirt antiterror measures. And that makes sense. That is why we have to be ready to respond, to alter measure as new threats arise. That is why I commend the administration for taking steps to close security gaps that we find in the Visa Waiver Program.

On Sunday night, the President called on us here in Congress to provide the legal authority for the administration to implement these changes as soon as possible. And just 2 days ago, the House voted on and passed a bipartisan bill to tighten restrictions and enhance security under this Visa Waiver Program.

Now, in light of the terrorist attacks in Paris and San Bernardino, the administration and Congress should evaluate what additional measures are needed to tighten security while still preserving American values of inclusiveness and

nondiscrimination. It is crucial we don't make rash policy decisions without thinking about the consequences and the implications and certainly the prices of our actions.

I caution my fellow Members of Congress to avoid knee-jerk reactions based on fear and focus on a more measured, comprehensive approach to national security. That approach should include addressing terrorist radicalization and recruitment; the Islamic State's operation capacity and community resilience; and, an often overlooked issue, combatting homegrown terrorist threats posed by our own sovereign citizens, militias, and other antigovernment terrorists. We also ought to find ways to unite with other countries to defeat ISIS.

Importantly, this approach should include Congress passing legislation that will finally close the terrorist gun loophole and prevent known or suspected terrorists from purchasing firearms or explosives at any gun shop in America. Congress can play a key role in defeating terrorist groups like ISIS and protecting the American people. And that is why I am happy we are having this hearing today.

And I yield back, Mr. Chairman.

[Prepared statement of Mr. Cartwright follows:]

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*



Mr. DeSantis. Thank you.

I will hold the record open for 5 legislative days for any members who would like to submit a written statement.

We will now recognize our witnesses. I am pleased to welcome Ms. Kelli Ann Burriesci, Deputy Assistant Secretary for Screening Coordination at the Office of Policy, Department of Homeland Security; Ms. Janet Kephart, director of Homeland Security Solutions at MorphoTrak, LLC; Mr. Brian Michael Jenkins, senior adviser and president of the RAND Corporation; and Mr. Ken Gude, senior fellow on the National Security Team at the Center for American Progress.

Welcome all.

Pursuant to committee rules, all witnesses will be sworn in before they testify. If you would please rise and raise your right hand. Do you solemnly swear the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

All right. Thank you. Please be seated.

All witnesses answered in the affirmative.

In order to allow time for discussion, please limit your oral testimony to 5 minutes. Your entire written statement will be made part of the record.

Ms. Burriesci, you are up for 5 minutes.

STATEMENTS OF KELLI ANN BURRIESCI, DEPUTY ASSISTANT SECRETARY, SCREENING COORDINATION, OFFICE OF POLICY, DEPARTMENT OF HOMELAND SECURITY; JANICE KEPHART, DIRECTOR, HOMELAND SECURITY SOLUTIONS, MORPHOTRAK LLC; BRIAN MICHAEL JENKINS, SENIOR ADVISOR AND PRESIDENT, RAND CORPORATION; AND KEN GUDE, SENIOR FELLOW, NATIONAL SECURITY TEAM, CENTER FOR AMERICAN PROGRESS

STATEMENT OF KELLI ANN BURRIESCI

Ms. Burriesci. Thank you, Chairman DeSantis, Chairman Jordan, Ranking Member Lynch, Ranking Member Cartwright, and distinguished members of the subcommittee. Thank you for the opportunity to testify on behalf of DHS on the U.S. Visa Waiver Program.

The Visa Waiver Program permits citizens of 38 countries to travel to the United States for business or tourism stays for up to 90 days without a visa. That does not mean travelers are able to board a plane with no security checks. "Waiver" does not mean waiving security. There are a host of checks conducted as a result of each applicant being required to have an approved Electronic System for Travel Authorization, or ESTA. In addition, countries are required to meet security standards. And they are reviewed every 2 years to ensure these standards are

maintained. DHS has and will continue to adapt the VWP to meet the challenges of the modern threat environment.

Let me walk through three security pillars that are required of VWP countries but not of countries whose citizens must obtain visas. First, countries are required to meet multiple statutory and policy requirements. These include, among others, entering into agreements with the United States to share information about known and suspected terrorist, reporting to the Stolen and Lost Travel Documents database, and issuing new passports. As a result of the information-sharing arrangements, VWP countries have provided information on 9,000 known or suspected terrorists in the United States. And VWP countries are responsible for nearly 70 percent of the records in INTERPOL's Stolen and Lost Travel Documents database.

The second pillar is screening of the travelers. All travelers coming to the United States are screened, regardless of whether they were an ESTA for a visa. ESTA applicants are vetted against the same biographic databases as visa travelers. This includes DHS holdings, the FBI's Terrorist Screening Database, State Department's CLASS system, and INTERPOL databases.

ESTA applications are also vetted by the National Counterterrorism Center. This screening occurs before travelers depart for the United States. DHS also recurrently vets ESTA data on a daily basis, which means that even though an applicant has

an approved authorization for travel, an ESTA is continuously reviewed throughout its validity period for new derogatory information. If someone is a national security concern, their ESTA application is not approved. Since ESTA's inception, CBP has denied over 6,000 ESTA applications on national security grounds. And, of course, DHS is vetting all travelers before they depart for the United States and upon arrival at a point of entry.

The third security pillar is the statutory requirement to conduct an assessment at least every 2 years on each VWP country to ensure security standards are maintained. DHS conducts 19 VWP reviews annually, each review supplemented by an intelligence assessment. Following the conclusion of every review, DHS, in consultation with the State Department, provides a report to Congress regarding the results and designation determination. During our view, which takes approximately 6 to 9 months, DHS assesses each country's counterterrorism, law enforcement, immigration enforcement, passport security, and border management capabilities. We collect information from the government of the VWP country, the U.S. diplomatic missions in that country, the Department of State, Justice, and the intelligence community. Many reviews also include thorough inspections of airports, seaports, land borders, and passport issuance facilities. No other program enables the U.S. Government to conduct such consequential assessments of foreign partner security standards and operations.

Those three pillars are important. But we cannot be successful if we don't adapt to the evolving threat environment. In November 2014, Secretary Johnson introduced new data fields on the ESTA application. These new fields have enabled CBP and NCTC to identify a large number of applicants with potential connections to terrorism whose connection would not have otherwise been known. Per the November 30 White House announcement, we will make additional improvements to the application that will grant us greater insight into prospective VWP travelers who have been to Syria, Iraq, other conflict zones.

In August 2015, the Secretary added further security measures. These included full implementation of the required information sharing arrangements, collection and analysis of travel data, vetting against INTERPOL's Stolen and Lost Travel Documents database, and making sure all VWP travelers use secure e-Passports when traveling to the United States. The e-Passport measure will be implemented very shortly. CBP is already notifying ESTA applicants that they may not be able to board a plane to the United States without an e-Passport.

The recent tragic events in Paris underscore the need for the United States and its partners to swiftly implement these VWP enhancements. In conclusion, and keeping in mind the VWP program requires countries to meet strong security standards, vets all VWP travelers against the same databases as a visa and on a recurrent basis, and reviews each country to ensure standards

are maintained, the VWP provides significant security benefits to the United States and its citizens.

I look forward to responding to your questions. And I've submitted written testimony for the record. Thank you.

[Prepared statement of Ms. Burriesci follows:]

\*\*\*\*\* INSERT 1-1 \*\*\*\*\*

Mr. DeSantis. Thank you.

The chair now recognizes Ms. Kephart for 5 minutes.

#### STATEMENT OF JANICE KEPHART

Ms. Kephart. Good morning.

Chairmen DeSantis and Jordan, Ranking Members Lynch and Cartwright, as well as esteemed members of this committee, thank you for the opportunity to testify on terrorism and the Visa Waiver Program.

I come before you today in my personal capacity as a former 9/11 Commission border counsel to augment the good work conducted by the White House, DHS, and Congress since the tragic November 13 terrorist attacks and, before that, the 14 years since 9/11. Enclosed in my written testimony you will find 18 recommendations intended to address the terrorist traveler threat from radicalized individuals in Europe who seek to abuse the visa-free benefits of the VWP.

These recommendations include, first, how to secure the overall Visa Waiver Program; second, how to improve individual vetting of these travelers; and, third, how to further secure our ports of entry against terrorists entry.

To be clear, the benefits of not having to obtain a visa before entering the U.S. are beyond convenience. Visa-free travel enables the terrorist to avoid biometric screening until

arrival in the U.S., investigations by ICE HSI visa security units, security reviews by counterterrorism intelligence officers at the National Counterterrorism Center, and interviews conducted by consular officers trained in behavioral anomalies.

But, first, before reviewing these recommendations, let's make sure that the effort to revamp the VWP actually matches the terrorist threat of VWP travel to America. I think we can all agree that the threat evidence is pretty substantial and includes outright direct threats from Daesh against the U.S.; the ramped-up attacks against civilians we are seeing in Texas and now in California; the guidebooks that are in my testimony that Daesh itself are putting out, emphasizing faking identity and passports to assure border crossing; and reports of Daesh seeking to embed in the Syrian refugee populations in Europe.

Yet perhaps the most obvious evidence of the threat of terrorist travel from European countries is that France, the U.K., and Germany are all in the top 10 of producing ISIS foreign fighters in the world, with numbers now in the thousands. And these individuals have direct, legal, visa-free access to our shores.

So what do we do? First, in regards to the VWP program, we must require that all VW countries, as you all just passed in legislation, replace all their passports with those that hold biometric information that can be verified by our border personnel. But replacing paper booklet passports with



e-Passports is not quite enough. Our ports of entry must be able to read those passports to verify that the bearer of that passport is the right one by conducting facial recognition between the passport and the person standing in front of them. Not only do we not do that for foreign nationals today, but DHS has no capability right now to conduct facial recognition. They can only match fingerprints because the Office of Biometric Identity Management has yet to become fully multimodal in its biometric matching capability.

Another serious issue, on a completely different topic, are countries, like Malta and Cyprus, that put up their passports for sale with no residency requirement. VWP countries that sell citizenship outright to a potential terrorist should be made ineligible for the program.

Moving on to the individual traveler, the online ESTA application Kelli Ann has spoken of in-depth does add a layer of security by requiring passport and other information from the traveler in a timely manner so watch lists can be checked. However, the form, as DHS knows well, depends upon the applicant's veracity, which is not something that is usually in a terrorist's toolbox. Despite the ESTA form's inherent vulnerabilities, biographic information remains essential to processing. But biometrics do need to be added to the mix. One such opportunity for adding biometrics into the vetting of all travelers is requiring all VWP countries to establish CBP preclearance

operations to remain in the program. Preclearance authorities would encompass full admission procedures, including authenticating the passport is valid; checking to make sure the holder of the passport is the passport owner and that their name, face, fingerprint, or iris biometrics do not match any watch list. Preclearance would also be a win for legitimate travelers who can arrive in the U.S. with minimal cues and hassle. And the program itself would be stronger, individual application processing more secure, and the U.S. port of entry processing streamlined.

One last point I think we cannot overlook. The VWP tourist overstay issue remains. The GAO tells us that 43 percent -- 43 percent -- of VWP tourists make up over the overstay population in the U.S. Yet, as of 2013, there were over a million unmatched records in our biographic arrival/departure system. Who knows who amongst this group may be hiding in plain sight on U.S. soil because we simply haven't the means to know who is here and who is not and who may pose a threat amongst those overstays.

I encourage Congress to continue oversight of the VWP program, augment the good work that DHS is doing, improve biometric immigration processing, including full biometric exit implementation. Thank you. And I look forward to having further discussions with you.

[Prepared statement of Ms. Kephart follows:]

\*\*\*\*\* INSERT 1-2 \*\*\*\*\*

Mr. DeSantis. Thank you.

The chair now recognizes Mr. Jenkins for 5 minutes.

## STATEMENT OF BRIAN MICHAEL JENKINS

Mr. Jenkins. Chairman DeSantis, Chairman Jordan, Ranking Member Lynch, Ranking Member Cartwright, members of the committee, thank you very much for inviting me to testify on this important issue. There are two ways a foreign terrorist organization can carry out attacks in the United States. One is by persuading followers here to carry out attacks on their behalf. And certainly both Al Qaeda and more recently ISIL have exhorted their supporters here to do that. Both have had limited success in persuading some individuals here to carry out some attacks, in some cases with lethal consequences as we have seen. Their greater success is limited by the lack of traction that their ideology is having in the community here and by the remarkably effective efforts of domestic intelligence in uncovering and thwarting a number of these threats.

The second way is by recruiting operatives abroad and then sending them into the United States to carry out attacks. If we look at the recent history, we see that the threat has been mainly from homegrown terrorists. Of the 134 persons who since 9/11 have carried out or plotted terrorist attacks here on behalf of jihadist ideology, 96 of them were U.S. citizens, 19 were legal

permanent residents. In other words, 86 percent of these individuals were radicalized while they were living here. Eight more came into the country on various kinds of visas. One came in or attempted to come in on the Visa Waiver Program. That was Richard Reid, the so-called shoe bomber. Three had earlier crossed the Mexican border illegally. The remaining seven were asylum seekers, refugees, or others. That is not to say that all of those came here with the intent of carrying out terrorist attacks.

Now, the good news is that these numbers are small. There's no obvious hole in the fences. Those who entered used several paths depending on individual opportunities. The most common way was simply ordinary visas. And I do want to underscore here that it's not always clear that the visa interview is going to be better at picking up some of these people than the system we have in place for a visa work waiver.

While we may, however, draw some comfort from the fact that terrorists are not pouring into the country, there's no basis for complacency here. The threat is dynamic. Circumstances change. Our security must adjust. And looking ahead, there are some obvious concerns. The conflicts in Syria and Iraq will certainly continue for the foreseeable future. It may take years for the campaign currently directed against the so-called Islamic State to succeed in scattering it or defeating it. Meanwhile, ISIL's ideology continues to exert a very powerful pull. The

numbers are not precise, but all estimates of the number of foreign fighters in Syria keep going up despite the bombing campaign. There's also a difference here, I think we're beginning to see between those foreign fighters particularly from the West who are going to Syria and Iraq and the previous cohorts of those who went abroad to join other jihadist fronts in the past. This group is younger. It is attracted by ISIL's well-advertised violence, certainly not put off by that fact. It appears to be a more troubled population in Syria and Iraq. Some of these people are going to be participating in atrocities. That's going to change them. And while they are there, they're going to be subject to a continuing bombing campaign, which may strengthen their commitment and desire for revenge. So this is certainly going to be a long-term problem.

Our ability to vet and screen entries into this country depends a great deal on intelligence. And, indeed, it depends, in part, on our partners' intelligence holdings. And the problem here is that the European authorities are currently being overwhelmed simply by the numbers of individuals that they have to, they have to deal with. Therefore, I think it has to be our operative presumption that terrorist operatives, including returning foreign fighters, will continue to look for ways to penetrate our security and get into the country to carry out attacks, as well as recruit others already here to carry out attacks on their behalf. I look forward to your questions.

[Prepared statement of Mr. Jenkins follows:]

\*\*\*\*\* INSERT 1-3 \*\*\*\*\*

Mr. DeSantis. Thank you.

Mr. Gude, for 5 minutes, you're recognized.

#### STATEMENT OF KEN GUDE

Mr. Gude. Thank you, Chairman DeSantis, Chairman Jordan, Ranking Member Lynch, and Ranking Member Cartwright, and all the members of the committee. I appreciate the opportunity to testify before you today on this critical issue.

In the wake of the attacks in San Bernardino and also the attacks in Paris, it is important that we understand what is the best way forward to improve national security programs that protect the American people. In my view, that is to manage and minimize the risk rather than an attempt to completely eliminate the risk simply because we cannot eliminate a risk in the open society in which we live.

What we should be working on is working together to reassure the American people that the steps that we are taking to protect them are adequate to manage that risk. And in light of that, I want to say about the Visa Waiver Program reforms that were passed earlier this week that, while I don't agree with every aspect of that bill, I do think it was in keeping with the working-together aspect and identifying genuine vulnerabilities and trying to improve those security programs related to those vulnerabilities without shutting down access to the United



States.

What I think is unacceptable and dangerous in this time is to try and exploit the understandable and reasonable fears of the American people for political gain and push a jittery public toward hatred and prejudice. And I think that not for partisan reasons but because it is genuinely dangerous to the American people because it plays right into the hands of ISIS.

Before I get to my specific points about the Visa Waiver Program and other aspects of how we can protect the homeland, I want to elaborate on why I think it does play into the hands of ISIS to engage in rhetoric and actions directed at Muslim Americans and Muslims in the United States. ISIS has an explicit strategy -- they talk about it in English all the time -- to polarize Western societies as part of their effort to create a clash of civilizations. Now, their interpretation of a clash of civilizations is the West versus Islam, with ISIS representing Islam. Now, that is completely erroneous. ISIS does not represent Islam. ISIS is not a civilization. We are making a mistake to play into that framing of the issue and that ideology.

There can be no justification for joining ISIS. I'm not trying to rationalize any decision by anyone that they join ISIS. But we have to understand what motivates people to do so. And the alienation of Muslim communities in the West is one of the aspects that increases the capability of ISIS to recruit members into their ranks. Ignorance of that is not strength. Ignorance

of that is a weakness on the part of our strategy. And we must do all that we can to eradicate that from our policy and our rhetoric. Now, specifically on the Visa Waiver Program, while I think it was important to address these vulnerabilities, one aspect that I think is necessary should these changes become law is that Congress now has the responsibility to fund and resource the consulates in visa waiver countries to ensure that they can adequately manage what will likely be a much higher level of visa applications than they're traditionally used to because if they are visa-waiver countries, they probably don't have to deal with this very much. And we would not want to create that as a barrier to entry into the United States simply from a resource problem.

Getting to another aspect that was addressed or raised briefly by Chairman DeSantis, which is the refugee question, I join with Secretary Albright, Secretary Kissinger, many other former national security leaders, and I urge the Congress to reconsider the plan that would effectively shut down Syrian refugees entering the United States. The program is very rigorous. It is the most rigorous process to enter the United States of any way that you can enter the United States legally. I believe that the program adequately manages the risk. And should that come up before this Chamber again, I urge you to reconsider.

Lastly, I want to raise a point that Chairman DeSantis identified in his testimony, which is that we have a challenge

for people who are in the United States and radicalized when they are here, legally or whether they've always been here. One of the things that I find hard to reconcile with the demand for the virtual elimination of the risk from Syrian refugees is an acceptance and tolerance of risk that individuals who have been identified as suspected of being tied to terrorism can freely purchase weapons in the United States. I find that -- it's just hard for me to understand how, on one side, we seek to eliminate the risk from Syrian refugees; on the other side, we seek to tolerate risk at a very high level of suspected terrorists getting their hands on the most dangerous weapons.

With that, I will conclude. And I look forward to your questions. Thank you.

[Prepared statement of Mr. Gude follows:]

\*\*\*\*\* INSERT 1-4 \*\*\*\*\*

Mr. DeSantis. Thank you. Thank you.

The chair now recognizes himself for 5 minutes.

Ms. Kephart, given the recent events in Paris, what improvements could be made to the vetting process for visa applicants generally in order to protect the security of the United States? And what lessons are there to be learned with regard to our immigration system from past terrorist attacks?

Ms. Kephart. I think the visa system itself -- do you want the visa-free system or the visa system?

Mr. DeSantis. Both. Because I think that we have to look at the visa system in order to evaluate the visa-free system. I think there's problems with both.

Ms. Kephart. Right. So, on page 14 of my written testimony, I have a chart there which pulls together the elements that visa has today and the visa process has today that the ESTA process for visa-free travel does not. There are a number of elements there I think in the visa travel that can be brought into the visa-free. The biggest one I think -- without demeaning the value of the ESTA process itself because it does have value -- is to add the biometric screening to it. I think it's very difficult to do that necessarily with the individuals within the Visa Waiver Program. You really have to do that in a controlled environment, which is why I recommend preclearance be a mandated requirement for VWP status.

So, for visa-free, I think adding the biometric and the

vetting before they travel to the United States and make that a complete vetting process, what you're not going to get with that, which visas do have today, is the interview necessarily, although you could have secondary inspection available there. And you're not going to have that time to do what they do at consular offices now, which is, for those that have it, the visa security units that do the extra immigration check through ICE, HSI, or the National Counterterrorism Center intelligence checks. You're not going to have that ability to do an in-depth, in-your-own-time check.

The visa process I honestly think has done a real good job, the State Department, of bettering itself over the course of time. The one thing that has happened is they've peeled back a little bit on the interviews. And they made some requirements there.

Mr. DeSantis. -- Tashfeen Malik, who had been going back and forth --

Ms. Kephart. Yeah. Yeah.

Mr. DeSantis. -- from Saudi Arabia to Pakistan and had been radicalized -- now they say -- before she came here.

Let me just ask you this. We passed a bill this week. That does not -- that bill may be a first step, but that does not solve all the problems, correct?

Ms. Kephart. That's correct.

Mr. DeSantis. And we talk about some of these other countries. But a country like Belgium does not do a very good

job at providing the type of information that we would expect in order to be sure that the people who are getting visa-free travel. So somebody in a place like Molenbeek, they can basically, even under this bill, they're still going to be able, if they have a passport, to come to the United States. Is that your understanding?

Ms. Kephart. Yes.

Mr. DeSantis. Ms. Burriesci, senior DHS officials told the Government Accountability Office in April of 2013 that the Department had not reported overstay rates because it did not have sufficient confidence in the quality of the overstay data. And so they said that they couldn't reliably report overstay estimates in accordance with the statute. The GAO went on to link the lack of confidence in overstay data to current biographical data system and lack of a biometric system to verify the identities of alien travelers. Why did DHS officials tell the GAO that it did not have confidence in the biographic system in 2013?

Ms. Burriesci. During that time, we were still working to connect some systems, some biographic systems, to exchange data between agencies within DHS. And one of the issues, once you are enhancing your systems, you can't kind of go back and see the data that, you can't unfix what you, what was in the past. So we have worked the last several years to improve those data exchanges and make sure that data is flowing in order to be able to develop accurate numbers moving forward.

Mr. DeSantis. So you have confidence in it now, unlike Secretary Napolitano did not have confidence, you think now, standing here today, that the system is good and trustworthy?

Ms. Burriesci. We have certainly increased confidence since that time, absolutely.

Mr. DeSantis. But that may not be sufficient.

Let me ask you, Ms. Kephart, to comment on specifically, if a terrorist is able to come through the Visa Waiver Program, supposed to be here 90 days, but in point of fact if they come here and they need a 6-month time period in order to orchestrate and conduct an attack, is there really a significant risk to them that they are going to be removed from this country on the 91st day?

Ms. Kephart. Not unless they come across criminal law enforcement and there's some connection to a terrorist watch list, no.

Mr. DeSantis. Exactly.

Let me ask Mr. Jenkins and Ms. Burriesci. Is DHS currently -- well, let me ask Ms. Burriesci this first one -- is DHS currently monitoring individuals who have recently traveled to countries, such as Syria and Iraq, where radicalization or training efforts are obviously readily apparent?

Ms. Burriesci. So if there was continuous travel that had a nexus to the United States, we would certainly have that information. If there's not a nexus to the United States and,

say, one of our VWP countries are aware of that travel, they are absolutely reporting foreign fighter information to us. That's one of the benefits of the VWP program.

In cases if it's unknown to the VWP country, unknown to the United States, there's no nexus; that is a potential that we would be unaware of that travel. That's why when individuals travel to the United States, we also do have algorithms running in the background for the checks that we do conduct to do our best to match up what we might term as, like, broken travel because it doesn't have that nexus.

Mr. DeSantis. Let me ask Mr. Gude, one of the statements in your report was from a woman who said ISIS wouldn't be here if there wasn't Islamophobia. Do you believe that that statement is true? In other words, would you subscribe the motivation for the World Trade Center bombing in 1993 to a reaction against Islamophobia?

Mr. Gude. No.

Mr. DeSantis. What about the Khobar Towers in 1996? No, correct?

Mr. Gude. No. But what I would say --

Mr. DeSantis. The 9/11 attack?

Mr. Gude. I'm sorry?

Mr. DeSantis. The 9/11 attack?

Mr. Gude. No.

Mr. DeSantis. Right. So these people have an ideology



independent of anything, our policies or what we do. I mean, do you agree with that?

Mr. Gude. I certainly do. But I would say that simply because they have their own motivations, they certainly don't need an excuse to attack us. And, again, I'm not trying to rationalize any decision to do so. But I think our own ignorance about what does motivate them in some way and what does alienate populations, particularly in Europe, they have a much more serious problems with this in Europe than we do here in the United States, but this, if we create a system or we create a situation in which Muslims feel like they need to be separated from society, that makes it some of them much easy and makes them -- some of them -- much more susceptible to the kinds of sophisticated recruiting techniques that ISIS employs and not -- and we should be making it harder for them, not easier.

Mr. DeSantis. What strikes me is that some of the people who have been very successful terrorists have been educated, you know, middle, higher income people that actually had a lot of opportunities. And so I'm not saying that we don't need to be sensitive to the broader populace. But I think that it's not something that is being done necessarily in reaction to our policies.

And you talked about managing the risk of terrorism rather than eliminating the risk of terrorism. And you cited the refugee -- you acknowledge that there is risk with the refugee

program, given the FBI Director's statements that they cannot vet all the people that are coming.

Mr. Gude. Of course, there's risk. And that's why they established the most rigorous screening system.

Mr. DeSantis. But it's a screening system, as Mr. Jenkins points out. Some of the people who have come and have committed terrorist acts have come through the refugee program. I think the question is, what is your tolerance for risk? I think most Americans, if they think that there's a chance, even if you're 99 percent accurate out of 10,000 people that you're bringing over here, and you're talking about 100 people that you'd be bringing into the country that would potentially do harm. So I think how you deal with the risk, I think that your testimony suggests you would have more tolerance than I think most Americans would be.

I'm out of time. Let me recognize Mr. Lynch for 5 minutes.

Mr. Lynch. Thank you, Mr. Chairman.

I want to thank all the witnesses. You've already been helpful in some respects. I do want to go over our vetting process and screening process because there's some statements out there that are really in conflict. Some of the witnesses have pointed to the weaknesses. Others have pointed to the strengths.

In one of our previous hearings, we had the Department of Homeland Security Inspector General John Roth testify both before our committee and before Homeland Security. Before the Homeland

Security Committee in June, he pointed out that, despite rigorous processes, that TSA did not identify 73 individuals with links to terrorism because TSA was not cleared to receive all the terrorism databases that other agencies had and did not have access to current interagency watch list guidance. So the Office of Inspector General did something very simple, he asked for the TIDE list, the terrorist, you know, terrorist -- T-I-D-E.

Ms. Burriesci. Identities Datamart Environment.

Mr. Lynch. There you go, Terrorist Identities Datamart Environment. It's basically the terrorist watch list. He took that list, and then they did a merge with people who were working in secure locations at our Nation's airports. So they merged the two lists. And there were 73 individuals who were on both lists, the TIDE list, and they were working in secure locations with credentials, you know, they had those credentials around their necks working at secure locations. So that makes me worry. That makes me worry that -- now, I originally thought they were DHS employees -- and I was wrong -- because DHS was screening them. But they were actually working for contractors within the airport, airlines, or maintenance people. But the problem is, you got these people who are on the terrorist watch list and they're working in secure areas at the airports; scares the hell out of me.

So now we have this situation going on with the Visa Waiver Program. And we're screening them. Now, in fairness, OIG, the

Office of Inspector General, Mr. Roth said he did not fault TSA because they didn't have access to that intel; they weren't given those lists. So I'm not going to hold their feet to the fire here, because they didn't have the information. But I damn well am sure they're going to get it because we can't have that happening.

So, Secretary Burriesci, have we, because of that situation, and also DHS said at the time: Okay, we got to straighten this out. We're going to take steps. We'll do a deep dive on these 73 people, figure out what the indicia of terrorist connection is, and take appropriate action.

And I am assuming that that has happened. I hope that's not a leap of faith. Nevertheless, the vetting process, the screening, have we got that straightened out so that all the bad guys are on the lists that all our people see who are screening?

Ms. Burriesci. I'll start by saying the interagency does the very best it can to make sure we have the most solid, consolidated terrorist watch list. And I believe the United States has the best terrorist watch list. The Terrorist Screening Database is the United States Government's consolidated terrorist watch list. That is a different database than TIDE, the one you mentioned. TSA does screen all airport workers, as well as all of its other credentialed populations, against the terrorist watch list.

Mr. Lynch. Okay. Now, just for my own education, was the National Counterterrorism Center that did this merge that allowed

73 people with secure, you know, credentials in the airports that are on the TIDE list, is that list better? Is it the serious characters? Is it a -- I know one of these lists is 900,000 people. I think that's the TIDE list, right? So is the broader list better? Or is the narrowest list better? What is the distinction here?

Ms. Burriesci. So the terrorist watch list, the Terrorist Screening Database, owned and operated by the Terrorist Screening Center, holds all of the known and suspected terrorists. That's our bad guy list. That's what we're going to screen all of our credentialed population --

Mr. Lynch. So the people at the National Counterterrorism Center, they don't have bad guys?

Ms. Burriesci. The TIDE database, yes, has all the people in the Terrorist Screening Database in it, as well as other individuals. And I highly recommend you have a closed session with NCTC to discuss that because they can go into significant detail with you.

Mr. Lynch. We've had them in. Just so you know, we had them in. Just so you know, there are no good guys on that list that was given to me. Are you saying that there's good guys on that list?

Ms. Burriesci. On which list? I'm sorry.

Mr. Lynch. The National Counterterrorism Center's TIDE list.

Ms. Burriesci. I'm saying that there are individuals who have been cleared and have no nexus to terrorism. And we make sure that we do not --

Mr. Lynch. While they're on the list or after they've been cleared from the list?

Ms. Burriesci. I highly recommend that you have a detailed session with them because --

Mr. Lynch. As long as you're not putting a fiction out there that we've got good guys on one list that we're using, as long as you're not saying that.

Ms. Burriesci. Sir, we recurrently vet all individuals against the Terrorist Screening Database that have access to our secure areas of our airports. It's recurrently vetted. TSA will know in real time --

Mr. Lynch. Just to be clear because if the National Counterterrorism Center has a list of good guys, then we're in serious trouble. I need to drag them in here and say: What are you doing? I wish I had them here now because we have --

Ms. Burriesci. They could go into detail in a closed session on anything. I'm sure they would be happy to do that.

The OIG report wasn't about individuals though. And I did want to correct that. It was records. So when TSA did an additional scrub, it was less than that.

Mr. Lynch. It was 69 instead of 73. Are you going to hang your reasoning on that argument?

Ms. Burriesci. Absolutely not.

Mr. Lynch. Okay. So it's 69 and not 73. I'll give you that.

Ms. Burriesci. And TSA has access to the TIDE database as well. What they're seeking, what the OIG's report was alluding to is giving them automated access. So just to clarify, there are some nuances.

Mr. Lynch. Yeah. Well, I bristle at the fact that I got pushback that I was wrong because these were contractors that were in secured areas with security credentials and they weren't DHS employees, like that's somehow vitiates the blame here. The idea is that you have people on the terrorist watch list working in secure areas at the airports. That's the point I'm trying to get at. It's the vetting process, the screening process that we are being told over and over again that is so robust and impervious. So let's work together here. And let's not be in denial. Let's just say: Okay, we got some stuff we need to fix. And let's fix it. I'm with you.

RPTR DEAN

EDTR HOFSTAD

[11:05 a.m.]

Ms. Burriesci. Sir, I'm always willing to fix anything in terms of security.

Mr. Lynch. All right.

Ms. Burriesci. DHS' mission is to prevent terrorism. I just wanted to clarify --

Mr. Lynch. All right.

Ms. Burriesci. -- that those individuals were not on the terrorist watch list.

Mr. Lynch. Wait a minute. Well, I need to go back here again. They are on the National Counterterrorism Center's list of people with connections -- let me read what the inspector general said again.

And you missed them. You missed them. You didn't have the chance to even review what they were guilty of because you completely missed them. So you didn't vet them. That's why they're working at the airports.

Let me just go back to what the inspector general did. He pointed out that, despite rigorous processes, TSA did not identify 73 individuals with links to terrorism because TSA is not cleared to receive all terrorism categories.

Hello. So you didn't vet them. How do you know they were



good guys?

Ms. Burriesci. And all I'm clarifying, sir -- I'm not disputing what you read in the OIG report. I'm just saying that that --

Mr. Lynch. You are. You are. He just said "links to terrorism," and you're saying no.

Ms. Burriesci. Because NCTC's database is not the terrorist watch list. The terrorist watch list --

Mr. Lynch. I understand the distinction between the two lists.

Ms. Burriesci. So TSA --

Mr. Lynch. But you didn't have the other list. TSA did not have the other list.

Ms. Burriesci. TSA has access to the list but not in an automated fashion --

Mr. Lynch. This is the problem. Right here, this discussion, you and I, this is the problem. This is the problem.

You're saying that because these people have links to terrorism but they weren't on that list -- they were on another list. So, even though they have links to terrorism, you're going to let them work in secure areas of the airport, no problem. Nothing to see here, let's move along.

Are you kidding me? That's why we have -- look, there is, like, 75 percent of the American people who don't believe we have a plan, that the administration has a plan to deal with this.

This is why. This is why. I'm on your side. I'm trying to make this safer, and all I'm getting is resistance that they weren't on that particular list. Give me a break. Come on.

Let's work together here just to make the airports safer. And if we have a problem, if we have a gap, say, "We had a gap, we are going to fix it," rather than doing this silly dance that they are not on the list that you go by.

Ms. Burriesci. Absolutely, sir, I want to work with you. And I'm happy to go into detail and --

Mr. Lynch. All right. I'll yield back.

Ms. Burriesci. -- on all the classified pieces --

Mr. DeSantis. The gentleman's time has expired.

The chair now recognizes Mr. Russell for 5 minutes.

Mr. Russell. Thank you, Mr. Chairman.

We've been struggling with the number of folks that are on the terror watch list. As Members of Congress, we're trying to determine what that number is and are having to rely on open source information.

So, Secretary Burriesci, could you, even in ballpark terms, tell us what is the size of that list?

Ms. Burriesci. I don't actually have that off the top of my head, but I can get back to you.

Mr. Russell. Can you give us an estimate where we didn't have to rely on open press reports? Is it between one and a million? I mean, what would be your number?

Ms. Burriesci. I really just don't even want to speculate on a wrong number, but I'm happy to call my --

Mr. Russell. You can't even speculate on the size of the list.

Ms. Burriesci. -- interagency partners and get back to you on that.

Mr. Russell. Ms. Kephart, would you enlighten us, please?

Ms. Kephart. My information is a few years old. I was about to meet --

Mr. Russell. A few years old. Yeah.

Ms. Kephart. -- with Mr. Healy of the Terrorist Screening Center a few years ago where he was able to give me information he said I could make public. At that time, I did so, and, at that time, there were 10,000 to 20,000 terrorists in the U.S., on U.S. soil, that the FBI knew about. That's what I know.

Mr. Russell. People suspected, that were under suspicion.

Ms. Kephart. The folks that were on the terrorist screening watch list, to have reasonable suspicion that they were indeed involved with terrorism, that legal level that is a little bit above, in terms of evidence, of the TIDE list, which is just a conglomeration of people we think could be involved.

Mr. Russell. Can they committee get a number? I mean, we have people of all --

Ms. Kephart. That's up to the administration, sir. I'm private.

Mr. Russell. We have the Nation, you know, on every side of this issue -- 407 people on the House floor, I mean, if that's not darn near unanimity, I don't know what is in this building, that voted for this visa waiver protection because we feel that that is where the greater threat lies. We can discuss the other aspects. But we can't even get good figures in an open hearing that would be, oh, rounded to the nearest 100,000, say.

Can you give us a number?

Ms. Burriesci. Sir, I just want to make sure that the number is accurate. And I will --

Mr. Russell. Oh, sure, but we --

Ms. Burriesci. -- make sure the Terrorist Screening Center is responsive to that request.

Mr. Russell. Okay. Thank you. And I guess we'll have to rely on our First Amendment and reporters that would dig, because, you know, we're just the Oversight and Government Reform Committee. What business is it of ours, constitutionally, to get these numbers?

Could you speak to the passports for sale on Malta, Secretary Burriesci?

Ms. Burriesci. I don't have information on that.

Mr. Russell. Well, you just gave us some of these concerns in your testimony today, such as passports that would be for sale in Malta and not going through a vetting process, and that caught my attention. So I would like you to comment.

Ms. Burriesci. That was in Ms. Kephart's testimony.

Mr. Russell. Oh, I'm sorry, Ms. Kephart.

My apologies, Madam Secretary.

Ms. Burriesci. That's okay.

Ms. Kephart. So Malta and Cyprus are the two visa waiver countries right now that sell citizenship for a price, with no residency requirements and very little vetting. Other countries, including ourselves, also make long-term residency and passports available based on investment.

But the countries that absolutely sell it outright with no vetting procedures in place, I think, are a little bit dangerous. And, of course, Malta and Cyprus have had serious financial issues --

Mr. Russell. But these are among the 38, Cyprus and Malta --

Ms. Kephart. Yes, they are. They're visa waiver countries right now.

Mr. Russell. Okay. Thank you so much.

And, Mr. Chairman, I just want to address one thing that was made in some opening testimonies -- or, not testimonies, but comments of our committee. As probably the only firearms manufacturer in Congress, there's a lot of very inaccurate information that's being thrown out there.

One, if you are a nonresident immigrant alien, you cannot purchase a firearm. If you're on any visa waiver, it is unlawful, it is against the law to purchase a firearm. And you certainly

can't walk into any facility and purchase explosives. And I would be happy to educate any member on this committee on what 18 U.S. Code is on the sale of firearms. We are wasting a lot of time and effort on them.

Mr. Gude, you said that you didn't totally agree with every aspect of what 407 Members of Congress voted for this last week. I would be curious what you didn't agree with.

And then you said that we should not be on the hook to fund higher standards. Pray tell why other nations should have our money when we're trying to protect our shores. If they want a visa waiver, why should we pay for that? Don't you think they should? I am curious to your logic here, sir. Could you please enlighten me?

Mr. Gude. On the last part, I'm not sure I follow that question.

Mr. Russell. Well, let me reiterate it, with the chairman's indulgence. You said that we would have to -- these, you know, changes in the Visa Waiver Program, that we would have to allow, you know, funding for these other countries to handle that.

Mr. Gude. Yeah, our own consulates in those countries. If you're in a visa waiver -- if you're a consulate in a visa waiver country, you probably do not have a large number of staff there to process visa applications. So U.S. Government employees in U.S. embassies and consulates in visa waiver countries. That was the point that I was making.

Mr. Russell. Well, I think those countries, if they want this, that they certainly could assist in the expense of that. And --

Mr. Gude. But excuse me, if I could just -- that situation is analogous, sir, it's exactly the same to what every U.S. embassy and consulate has in a non-visa-waiver country. It shouldn't be an additional burden; that we would think that if we were going to change the rules about how people in visa waiver countries get into the United States, I think it's completely reasonable, then, to say that we have to ensure that our U.S. Government offices are fully resourced in order to handle that change.

Mr. Russell. Well, sure. And when you look at China, who is not one of the 38 countries, they send a lot of people here. They have more people in this country on permanent residencies of some nature than I have in my whole State, as a population. And they don't have the visa waiver. And I think that we can make these accommodations and still protect the United States of America.

And, with that, Mr. Chairman, thank you for your indulgence, and my time has expired.

Mr. DeSantis. Thanks. The gentleman's time has expired. The chair now recognizes Mr. Cartwright for 5 minutes.

Mr. Cartwright. Thank you, Mr. Chairman.

And, again, I thank the witnesses to this joint subcommittee hearing of the Oversight and Government Reform committee.

You know, my friend Mr. Russell of Oklahoma just intoned the phrase, "We are only the Oversight and Government Reform Committee," and he was saying so quite tongue-in-cheek, and I want to amplify on that a little bit.

You know, all of us, every single Member of Congress, regards as our most solemn duty the protection of the American public. And we all feel that way on this committee. And I must say that I have some very close and dear friends on the other side of this dais; we all feel the same way. And we're all looking for strength and unity. And our common purpose is protecting the American people. And we're having this hearing to that end.

Now, you know, we've been talking about vetting processes and screening processes. And, you know, here on Oversight and Government Reform, when we take testimony, we have our own vetting and screening processes. In fact, one of them is a form that we call the Truth in Testimony form, and all witnesses are required to fill it out.

Ms. Burriesci, you're with DHS -- Secretary Burriesci. Is it a correct fact that a company called MorphoTrak has a contract with DHS right now?

Ms. Burriesci. I actually don't know the answer to that, but I can check. I don't have any contracts in my area.

Mr. Cartwright. Well, as a matter of fact, it does. In fact, I have a news article here that indicates U.S. Citizenship and Immigration Services, which is a part of DHS, recently entered



into a \$13.6 million contract with MorphoTrak for a fingerprint scanning system.

And I'd like to enter this into the record, Mr. Chairman.

Mr. Russell. [Presiding.] Without objection.

[The information follows:]

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

Mr. Cartwright. And this is about you, Ms. Kephart. I'm looking at your financial disclosure on the Truth in Testimony form, and I'm going to read it. There are only three questions on the form.

"Please list any Federal grants or contracts you have received since October 1, 2012. Include the source and amount of any contract." You wrote, "None." This is your handwriting; am I correct in that?

Ms. Kephart. Yes, it is, sir.

Mr. Cartwright. Number two, "Please list any entity you are testifying on behalf of and briefly describe your relationship with those entities." You wrote, "No. However, to be clear, I'm testifying in personal capacity, although I am with a leading biometric company, MorphoTrak, as of September 2015."

And then question number three says, "Please list any Federal grants or contracts, including subgrants or subcontracts, received since October 1, 2012, by the entities you listed above. Include the source and amount of each grant or contract." And you wrote, "None," although you had listed MorphoTrak in the immediately preceding answer.

Ms. Kephart. Correct.

Mr. Cartwright. And I guess the question is, Ms. Kephart, you knew we would be counting on you to be completing honest in filling out our Truth in Testimony form, didn't you?

Ms. Kephart. And I was, sir.

Mr. Cartwright. Okay.

Ms. Kephart. This is my 19th time before Congress testifying on issues of border security, national security, and --

Mr. Cartwright. Right. So you're not a rookie here. In fact, you're a lawyer, aren't you, Ms. Kephart?

Ms. Kephart. Yes, I am. And --

Mr. Cartwright. So when you see --

Ms. Kephart. -- I was not with MorphoTrak in 2012, sir.

Mr. Cartwright. -- a Truth in Testimony form that says list the entities above that you have contracts with the Federal Government and you wrote, "None," are you saying that's correct, even though there's a \$13.6 million contract with DHS?

Ms. Kephart. Sir, I am testifying in my personal capacity, not on behalf of MorphoTrak. So, yes, I filled out the form in terms of my personal capacity. However, if you would like me to go back and change the form and list those contracts, I'm happy to do so. USCIS has nothing to --

Mr. Cartwright. Well, what we're interested in here is that our forms get filled out correctly and that we have the complete context. So when we hear from a witness like you -- I mean, part of your testimony is recommending that we implement --

Ms. Kephart. And my written testimony, sir, includes that discussion on MorphoTrak. I was completely honest.

Mr. Cartwright. Part of your testimony is that we implement recommendations; three of them are to implement biometrics.

Ms. Kephart. Which I have testified about many times.

Mr. Cartwright. The company you work for makes and sells biometrics. Are you saying it's a matter of complete indifference to you whether your employer --

Ms. Kephart. Yes.

Mr. Cartwright. -- gets this business?

Ms. Kephart. Yes, sir, I am.

Mr. Cartwright. You're saying it is. Okay.

Well, here's the point. House Rule 10 requires this form to give committee members, the public, and the press a more detailed context within which to view the testimony. And we expect, Ms. Kephart -- listen, you're not a rookie at this.

Ms. Kephart. I am happy to go back and redo it, sir.

Mr. Cartwright. We expect you to fill out the form correctly so that we on the Oversight and Government Reform Committee and the American public listening to this testimony can view your testimony and your recommendations in the complete context, not a partial context, not a half-truth, the whole truth.

Will you do that in the future, Ms. Kephart?

Ms. Kephart. I will absolutely -- if you would like, sir --

Mr. Cartwright. Thank you.

Ms. Kephart. -- I will redo it today.

Mr. Cartwright. I yield back.

Mr. Russell. The gentleman yields back.

The chair now recognizes the gentleman from Ohio,

Mr. Jordan, for 5 minutes.

Mr. Jordan. Thank you, Mr. Chairman.

Ms. Burriesci, earlier this week, the chairman of the Homeland Security Committee gave an important speech where he talked about extremist groups, terrorist groups that are trying to exploit the refugee program. So, like Mr. Russell just a few minutes ago, I would like to see if you can give us some numbers just so the committee and the American people have this information.

How many Syrian refugees have entered the United States in the last year?

Ms. Burriesci. Sir, I didn't bring any of the refugee numbers with me because I was prepared to talk about visa waiver. But I can certainly have us send that to you.

Mr. Jordan. Do you know how many Americans have traveled to Syria in the last year?

Ms. Burriesci. I don't have that number on me either.

Mr. Jordan. So you wouldn't know how many Americans have traveled and then returned?

Ms. Burriesci. I don't have that number on me.

Mr. Jordan. How many Visa Waiver Program overstays are there currently in the United States?

Ms. Burriesci. Sir, I didn't bring that number with me.

Mr. Jordan. Ms. Burriesci, when I look at the witness list, you've got the longest title, "Deputy Assistant Secretary,

Screening Coordination, Office of Policy, Department of Homeland Security." You've got the longest title.

And it says "Screening Coordination." Now, what screening are you coordinating? Is that just intra-agency, or is that interagency?

Ms. Burriesci. It's both.

Mr. Jordan. It's both. So it's all of that.

Ms. Burriesci. I coordinate across DHS components as well as --

Mr. Jordan. And the two biggest issues right now that we're dealing with relatively, we had these terrible tragedies, terrible terrorist attacks, and we're talking about the refugee issue and the Visa Waiver Program issue, and you can't give us any numbers on either program?

Ms. Burriesci. Sir, I came prepared to talk about the Visa Waiver Program.

Mr. Jordan. And I just asked you how many Visa Waiver Program overstays are there, and you said you don't know.

Ms. Burriesci. Sir, I don't have a number. The Visa Waiver Program --

Mr. Jordan. So when I ask how many overstays of the Visa Waiver Program may have traveled to Syria before they got here, do you know that number?

Ms. Burriesci. Sir, if a Visa Waiver Program national has -- a citizen of a Visa Waiver Program country, rather, has

traveled to Syria, Iraq, or a conflict zone and they are considered a foreign fighter, that VWP country --

Mr. Jordan. I'm not asking that. I'm saying someone from Great Britain comes to the United States on a Visa Waiver Program and they are now an overstay, do we know if that person, who is here today -- maybe they're not even an overstay -- do we know if that person has been to Syria before they came to the United States? Do we know that?

I mean, I know this is what our bill that we just passed earlier this week is trying to get to. I'm asking, do we know that information now?

Ms. Burriesci. So that's why we have the IC involved and there's an intelligence assessment, and we use --

Mr. Jordan. I wasn't asking that. Do we know that? Do you know the number?

Ms. Burriesci. I don't know the number, but that's why I'm trying to explain that the --

Mr. Jordan. But do we have people who are in that category I just described, come from a Visa Waiver Program country, they are here today and may have been in Syria or Iraq or somewhere there before they came here? Do we know that?

Ms. Burriesci. If a citizen of a VWP country has traveled to one of those areas, there's a nexus to United States, or the VWP partners shared that information with us, yes, we know that information, and we will vet against it. We will also use our

algorithms --

Mr. Jordan. But could they be here right now is my question.

Ms. Burriesci. I don't have that answer, sir.

Mr. Jordan. All right.

Well, how about, can you tell me anything about the no-fly list then? You can't tell me anything about those -- how does a person get put on -- the criteria for that? Can you tell me anything about that?

Ms. Burriesci. Sure. The no-fly list is a subset of the overall screening database. The interagency works together. The Terrorist Screening Database is owned and operated by the Terrorist Screening Center, as I said earlier. There are criteria to get on that that are agreed to --

Mr. Jordan. How many American citizens are on that list right now? Can you give me that number?

Ms. Burriesci. I'm sorry, sir?

Mr. Jordan. How many American citizens are on the no-fly list right now?

Ms. Burriesci. I know there are American citizens on the list. It is an extremely small number, but I don't have my numbers with me. But, again, that is something I can easily get back to you afterwards.

Mr. Jordan. Ms. Burriesci, I've asked you the number of Americans who've traveled to Syria, you don't know; the number of Americans who may have traveled and returned, you don't know;



the number of Syrian refugees who have entered the country in the last year, you don't know; the number of Visa Waiver Program overstays, you don't know; the number of visa waiver overstays who may have been to Syria before they came here, you don't know; and the number of American citizens on the no-fly list, and you don't know.

And yet you are the Deputy Assistant Secretary for Screening Coordination, Office of Policy, Department of Homeland Security, in front of the Oversight Committee, and you can't give us one single number to some, I think, pretty basic questions?

Ms. Burriesci. Some of those statistics aren't held by DHS, and so that's why I would like to work with my interagency partners to get you --

Mr. Jordan. That's why I referenced your title. You're the one who's the screening coordinator for all this, and you said you were interagency. That's why I referenced your title. It seems to me, when you come in front of this committee, you should have that information.

Ms. Burriesci. I'm a DHS employee. I am a DHS career civil servant employee. And I will work with my interagency partners, but they're the authoritative source for a lot of those numbers that you mentioned.

Mr. Jordan. If you could get us those numbers and the ones Mr. Russell asked for, that would be very helpful.

I thank you, Mr. Chairman.

Mr. Russell. And if I may answer one of your questions, according to the Department of State, for fiscal year 2015, up to the 18th of November, there were 1,810 Syrians that had come into the country on the refugee program.

The chair now recognizes the gentlelady from New Jersey, Mrs. Watson Coleman.

Mrs. Watson Coleman. Thank you, Mr. Chairman.

And thank you to the witnesses for being here.

On Sunday, President Obama took the rare step of addressing the Nation from the Oval Office to discuss the recent terrorist attacks in San Bernardino and Paris and the rising level of unprecedented violence that the world is facing.

In Sunday's address, only his third from the Oval Office, the President called on Congress to take specific and immediate steps to protect the American public from further acts of terrorism. The President, however, was clear that those steps should not be driven by fear.

Here is what he said, and I quote: "Our success won't depend on tough talk or abandoning our values or giving in to fear. That's what groups like ISIL are hoping for. Instead, we will prevail by being strong, smart, resilient, and relentless and by drawing upon every aspect of American power."

The threat of ISIS is real. It is ultimately the goal of ISIS to instill fear, causing us to make decisions we would not otherwise make. And we must resist that urge to live in fear.

Mr. Gude, you have written about the exploitation of fear to influence public policy, and you said something in your testimony today that I want to highlight. You said, and I quote, "What is unacceptable and dangerous to American security are the kind of rhetoric and policy proposals that attempt to exploit Americans' reasonable fears for political gain and try to push a jittery population," which is an understatement, "toward increased hatred and prejudice."

What are the dangers of fear-based policy?

Mr. Gude. Well, I think there's two things.

One, it is often the case that when we make policy decisions in the immediate aftermath, with incomplete information and motivated out of a sense of fear, those policies over the medium and long term don't particularly turn out as we intended.

Secondly, I think that when we create a climate of fear and suspicion within the United States we risk alienating Muslim Americans and our Muslim populations, making it a situation in which they are more susceptible to the kind of sophisticated recruiting techniques that ISIS employs.

Now, again, I want to reiterate that I am not rationalizing any decision to join ISIS. Everyone has the agency, they make their own decisions, and there is no justification for joining a group like ISIS, whether or not you intend to commit violence.

But it is incumbent, I think, on policymakers to understand the motivations for why people do join ISIS and make it much more

difficult for ISIS to get people into their ranks.

Mrs. Watson Coleman. The President also called for the rejection of discrimination and proposals to treat Muslim Americans differently. Do you agree?

Mr. Gude. Yes. Absolutely.

Mrs. Watson Coleman. Discriminatory policies are inconsistent with the Constitution but also seem counterproductive from a security standpoint. What effect do these policy ideas have on ISIS and similar terrorist organizations?

Mr. Gude. Well, the narrative that ISIS is using, both talking to people who are already in its ranks and trying to recruit them, is that we are in a clash of civilizations, where the crusaders, or the West, versus ISIS, representing Islam. And when we in the West buy into that rhetoric, describe it as a clash of civilization, it makes it easier for ISIS to sell that narrative.

What they are trying to do, they divide the world into three groups -- the West, ISIS, and in the middle they call something called the gray zone. Now, their description of the gray zone is targeted at Muslims who live in the West and have not yet joined ISIS, not yet come to the caliphate, as they describe where they are in Iraq and Syria. And their effort is to literally destroy that gray zone by pushing Muslims toward ISIS.

Now, when we in the West engage in an anti-Muslim backlash,

we make that job easier. Now, again, I want to reiterate that there is no justification for making that decision. But, in our own actions and in our own policies, we should understand what ISIS is trying to do and not play right into their hands.

Mrs. Watson Coleman. Much of this anti-Muslim rhetoric has surrounded this Syrian refugee population, who a recent Cato Institute report found to pose no significant threat to the United States. Specifically, Cato found in a November 18, 2015, report titled, quote, "Syrian Refugees Don't Pose a Serious Security Threat," that, I quote, "Of the 859,629 refugees who have entered the United States since 2001, 3 have been convicted for planning a terrorist attack abroad and exactly zero have perpetrated domestic attacks."

With the rise of ISIS and the growing number of threats against the United States, we are seeing more and more suggestions for policies that lead to unintended consequences of trampling on the civil rights and liberties of American Muslims, and these ideals are inconsistent with ours.

Thank you.

Thank you, Mr. Chairman.

Mr. Russell. The gentlelady yields back.

And the chair now recognizes the gentleman from South Carolina, Mr. Mulvaney.

Mr. Mulvaney. Thank you, Mr. Chairman.

I'm going to try and get to something that might be a little

bit more simple, a little bit more straightforward, which is going back to something I heard during the opening testimony of Ms. Kephart and Ms. Burriesci.

And I apologize. When you have a last name like "Mulvaney," it gets mispronounced a lot. So I apologize if I'm butchering yours -- about the Visa Waiver Program, the basics of it.

Here's my question to both of you. I am a French national. I'm born there, I'm living in one of the suburbs, I have become a radicalized Islamist. Can I get on an airplane tonight to come to the United States of America?

Ms. Burriesci?

Ms. Burriesci. You're doing great with the name.

Mr. Mulvaney. Thank you.

Ms. Burriesci. A French national who wants to come to the United States for business or tourism reasons would require an ESTA. For any other reason, they would require a visa. The checks would be the same --

Mr. Mulvaney. I want to get in as quickly as I possibly can. I want to say I'm a tourist. Because I want to come here and blow something up. Could I get on the plane tonight and do that?

Ms. Burriesci. If we have that derogatory information, absolutely not, regardless of --

Mr. Mulvaney. But tell me the process I have to go through before I can get on the airplane.

Ms. Burriesci. You have to have -- so you have to fill out

an online application or a visa application, again, depending on your purpose for coming to the United States, and those are vetted.

Regardless of either, the same biographic checks are occurring. You're hitting the Terrorist Screening Database, the terrorist watch list, you're hitting State Department's holdings, you're hitting DHS holdings, you're hitting the National Counterterrorism's holdings. And you're going to be recurrently vetted.

If we have derogatory information that you have ill intent, you're a terrorist, you're a known or suspected terrorist, absolutely not. Either one, you're going to get denied.

Mr. Mulvaney. So, regardless of whether or not I'm a terrorist, I'm a French national with a French passport, and I just decide tonight that I want to get on an airplane and come to New York, I have to go through the process that you just mentioned.

Ms. Burriesci. Absolutely. Nobody can just walk on a plane and come to the United States.

Mr. Mulvaney. Ms. Kephart, is that right?

Ms. Kephart. Yes, it's right, as long as the terrorist has decided to use his real identity.

So, yes, Kelli Ann's process is, indeed, correct. You have to fill out an online ESTA process. You can even do that process at the airport. But it's only biographic, and that's the

difference.

Mr. Mulvaney. Okay. And let's build on that a little bit. How long does it take to do that? You say I can do it at the airport.

Ms. Burriesci, how long does it take me to actually go through that vetting process? Again, I'm assuming that I'm not lying yet. I haven't stolen passports; that's a different issue. I'm not trying to hack a computer. I'm just an ordinary French citizen with a passport. How long does it take to do that?

Ms. Burriesci. It's a short period of time to clear, assuming everything is coming back green. Certainly, if there's a flag of any kind, you're referred to the nearest consulate.

Mr. Mulvaney. Okay. So if there's no flag -- because what we're hearing now is that, while some of the terrorists in France, in the Paris bombings, were on some lists in France, others were not. So those folks, apparently, would not have come up on your background check, your vetting process.

Am I saying anything that's inaccurate so far? If we didn't know about them and the French didn't know about them, they would have cleared those background checks, right?

Ms. Kephart is saying yes.

Ms. Burriesci. Yes. The response would have been the same, whether it was an ESTA or a visa.

Mr. Mulvaney. Okay. So how long would it have taken to go through that process?

Ms. Burriesci. The ESTA application vetting is not a long



period of time. You can do it that day.

Mr. Mulvaney. Okay.

Ms. Burriesci. Yes, sir.

Mr. Mulvaney. Okay. So I guess what I'm hearing then -- and what I'm always concerned about is if I'm getting good information and the folks I represent are getting good information. And what I am hearing is that if I read something on the Internet, saw it on the news, heard it on talk radio, that said that at least some of the Paris bombers could have come into this country and we would never have known about it because of the Visa Waiver Program, that is a true statement.

Ms. Burriesci. I would really have to refer you to the FBI's Terrorist Screening Center for additional information other than what I've already said.

Mr. Mulvaney. That's fine. Let's assume, then, for my question that the French didn't know they were potential terrorists and we didn't know they were potential terrorists. They would be able to come in the same day.

Ms. Burriesci. If there is no derogatory information --

Mr. Mulvaney. I'm not trying to accuse you of not doing your job. I'm just getting trying to get information.

Ms. Burriesci. No, I understand, sir.

Mr. Mulvaney. Okay.

So, Ms. Kephart, how do we fix that?

Ms. Kephart. As I discussed in my testimony, I think the

win-win for everybody -- for DHS, for the program itself, for the traveler -- is establishment of preclearance and making that mandatory, something DHS has been pursuing for a while.

They're having trouble because every country they have to develop an MOU with. If you made it part of the Visa Waiver Program and established some requirements, I think it would make it easier for Customs and Border Protection to do that negotiation and to get that vetting prior to boarding, which is what everybody is always concerned about.

Mr. Mulvaney. Very quickly to both you ladies -- and I'm going to go a little bit over time but not too much -- is the bill that the House passed earlier this week on a large bipartisan margin, does that actually help the situation?

Ms. Burriesci. Yes -- oh.

Mr. Mulvaney. Ms. Kephart?

Ms. Kephart. Go ahead.

Ms. Burriesci. Yes, sir. The bill adds practical security value in many areas.

Mr. Mulvaney. Ms. Kephart, do you agree with that?

Ms. Kephart. It does -- it reiterates current law. I don't think it goes too much further than what we have on the books right now. The requirement regarding information regarding people who have traveled to terrorist known spots, that's going to be very difficult to enforce, I think.

So I think it's a very good start. I really appreciate that

it was bipartisan and the White House is on board and this is moving forward together, but --

Mr. Mulvaney. Last question.

Ms. Kephart. -- we need more.

Mr. Mulvaney. I appreciate the indulgence. Last question. Are we more at risk from someone traveling here from the United Kingdom, which is a Visa Waiver Program country, because of the information we get from them, or are we more at risk from someone traveling from Russia, which does not participate in the Visa Waiver Program?

Ms. Burriesci?

Ms. Burriesci. Sir, I certainly think that the Visa Waiver Program adds additional security value than just vetting the traveler alone. Because we have those information-sharing arrangements, they are sharing their known or suspected terrorists and foreign fighters with us. They are meeting security standards --

Mr. Mulvaney. Because the U.K. participates in the program, they give us information that other countries that do not participate in the program do not.

Ms. Burriesci. That's exactly right, sir.

Mr. Mulvaney. Do you agree with that, Ms. Kephart?

Ms. Kephart. Well, I think the difference with U.K. is it's one of the Five Eyes countries, so we have better information-sharing with them than we do even with some of the

other visa waiver countries. So perhaps you take a country like Belgium, which is not one of the Five Eyes -- and then I still think the Visa Waiver Program offers the opportunity to land in the United States in a more vulnerable way than the visa process does, although there are some benefits that Ms. Burriesci has discussed.

Mr. Mulvaney. Thank you, Mr. Chairman.

Mr. Russell. The gentleman yields back his time.

And the chair now recognizes the gentlelady from Michigan, Mrs. Lawrence, for 5 minutes.

Mrs. Lawrence. Thank you, Mr. Chair and Ranking Member.

I just want this on the record, that we passed a bill before we had this dialogue. And, to me, in Congress, that is not the process that the American people want us to do. This dialogue is important, and it should have happened prior to us voting on the bill.

I'm going to bring up an issue that I have continuously talked about. Gun violence has been an issue that I've been focused on since my time in Congress, particularly my district, which has been plagued with gun violence. This is the first year in history of our country that gun deaths are tracking to be the leading cause of deaths of Americans age 15 through 25. We are losing a generation to senseless gun violence.

The issue is becoming more disturbing when we hear that there is the possibility that terrorists, identified terrorists, are

able to legally purchase weapons that they need to commit act of violence simply because of a loophole in the law.

Mr. Chair, I wanted to enter into the record the GAO statement and letter dated March 6, 2015, if I may.

Mr. Russell. Without objection.

[The information follows:]

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

Mrs. Lawrence. The Government Accountability Office recently analyzed FBI data on background checks for firearm-related purchases for individuals on the terrorist watch list between February 2004 and December of 2014.

Mr. Gude, are you familiar with this recent GAO study?

Mr. Gude. Yes.

Mrs. Lawrence. According to this GAO report, individuals on the terrorist watch list attempted to purchase firearms or explosives in the U.S. at least 2,233 times, of least 2,043 of those sales were approved.

Mr. Gude, that means that 91 percent of the attempts by suspected or known terrorists to purchase firearms were approved. Is that correct?

Mr. Gude. To my knowledge, yes.

Mrs. Lawrence. In just the 2-year period between January 2013 and December of 2014, individuals on the terrorist watch list were involved in firearm-related background checks 485 times, of which 455 were approved. That is a 94-percent approval rate. Anyone that hears that number should have a sense of concern.

My question to you, sir, is that, while we have individuals who are legally not restricted -- and we're talking about individuals coming to this country. Tell me, what is your opinion on the concern on the purchases of guns by those who have been identified as terrorists?

Mr. Gude. Thank you for your question. It is an issue of grave concern. And I want to applaud all the members of the committee for their attention to the details in the questions that the panel has received trying to identify where the actual risks are in our system. This strikes me as one of our serious risks.

In his opening remarks, Chairman DeSantis identified that one of the categories of potential terrorist attacks are people who are radicalized in the United States. There would be no visa waiver or visa program or screening at the border that would catch those individuals. We are relying on the information that our intelligence agencies and our law enforcement community have about those individuals to ensure that they can detect and prevent any plots that target Americans here in the United States.

It is hard for me to reconcile the level of risk tolerance that many are advocating for entry into the United States, which is understandably extremely low and one that I broadly support, with what is the level of risk tolerance for individuals who are on the terror watch list, who we either know or suspect of links to terrorism, to be able to buy semiautomatic assault weapons.

Now, any process that restricts the access to purchasing weapons must also include an opportunity for a redress there. You know, if there's an error in the list, if you were erroneously denied purchase, there ought to be a robust process for you to be able to have that decision overturned if it is incorrect.

But the notion that we should allow potential errors in the system to prevent us from denying easy access to the most dangerous firearms to people that we think are terrorists is just mind-boggling.

Mrs. Lawrence. Thank you.

Mr. Chair, I just want to end with this chilling comment by a senior Al Qaeda operative. And I quote: "America is absolutely awash with easily obtainable firearms. You can go to a gun show and pick up a fully automatic assault rifle without background checks. So what are you waiting for?" That is one part of the radicalization.

The other thing I want to say before I close is that the comprehensive and deliberate policy to fight against terrorism is absolutely our job in Congress. And this issue should be just as much a part of the debate and a part of the discussion.

And the next time we have someone coming here from the Department of Homeland Security, I would hope that they would have more data and be better prepared so that we can get more information.

Thank you.

Mr. Russell. And the gentlelady has yielded back her time.

I wish to address one item. You cannot purchase a fully automatic anything at a gun show. They are controlled by the Bureau of Alcohol, Tobacco, and Firearms with a \$200 tax stamp. It takes months of approval, if approved, extensive checks.



There is a lot of inaccurate information out there, and I would just correct the panel member on this issue.

An assault rifle is a select fire rifle that you can switch from semiautomatic to fully auto. You cannot go and purchase one of those anywhere. And we should not take the bait on ISIS propaganda. And while we're having these discussions, we can't, on suspicion alone, allow our constitutional liberties to fall prey to such inaccurate nonsense.

And, with that, I would like to turn over the chair -- well, actually, I will turn to and recognize Mr. Mica from Florida, and then I will turn over to the chair.

Mr. Mica. Well, thank you.

And, again, the gentlelady preceding me mentioned about the deaths in the United States with firearms. And most of those weapons are obtained illegally. And it appears even in the San Bernardino case that some of the weapons were obtained illegally. So they are available.

In France, they probably have the tightest gun control measures, and I'd love to share with you a list of the weaponry that was assembled in the latest Paris attack. And I was over and actually saw the sites of the Hebdo and the deli attack. And I saw the weaponry that was assembled there with a very, very, very, very, very tight gun control.

I have a question first for the Homeland Security witness. Okay. We had this female terrorist in San Bernardino, and she

was granted a visa to enter the United States, a fiance(e) visa, as far as we know. Do you think that is the case, or you --

Ms. Burriesci. She did have a K-1 visa, yes.

Mr. Mica. Okay. And to do that, she had to submit to an interview. Is that correct?

Ms. Burriesci. Yes, with State Department.

Mr. Mica. So she had an interview. She also had to provide some biometrics. Is that correct?

Ms. Burriesci. Yes, sir. Biometrics and biographic information and an interview --

Mr. Mica. But biometric?

Ms. Burriesci. All of them as part of the visa application.

Mr. Mica. Okay. So that's the same method, though, that pretty much we will be adopting should the Visa Waiver Program we just -- we just considered before Congress pretty much the same thing, an interview and biometric, because that's what is missing. If you want to come in on a visa waiver, you don't have to go through that now. Is that the case?

Ms. Burriesci. All those checks occur, and it's a matter of the timing of where they occur.

Mr. Mica. But, again, we're talking about doing the same kind of thing we did with her.

Ms. Burriesci. There --

Mr. Mica. Yes. Yes. The answer is yes. I'll answer my own question.

Okay. So a French passport, if you entered as a French citizen, does it contain biometric?

Ms. Burriesci. So all the visa waiver programs are issuing a passport, and the minimums --

Mr. Mica. Do they have biometric?

Ms. Burriesci. So the minimum standard for --

Mr. Mica. Do they have biometric?

Ms. Burriesci. Yes, sir. It has a digital photo in it. Yes.

Mr. Mica. A photo. Do they have fingerprints?

Ms. Burriesci. Many visa waiver programs also include -- not many. I'm not actually --

Mr. Mica. Some do.

Ms. Burriesci. -- sure of the number, but some have fingerprints.

Mr. Mica. But some don't.

Ms. Burriesci. But some don't, similar to the United States doesn't --

Mr. Mica. And many entry points in the United States do not have the capability of fingerprint verification, do they?

Ms. Burriesci. I'm sorry, I missed the beginning of your question.

Mr. Mica. Many entry points in the United States do not have the ability or the capacity to confirm fingerprint identification.

Ms. Burriesci. So all of our ports of entry do capture and run checks on biometrics. If you're referring to the e-Passport itself, all CBP --

Mr. Mica. When you come across the Mexican border, all of those folks coming in are, in fact -- their fingerprints are being checked?

Ms. Burriesci. Yes.

Mr. Mica. Ms. Kephart says no.

Ms. Burriesci. It depends if we're talking about the e-Passport or just --

Mr. Mica. No, just people coming --

Ms. Burriesci. Everybody coming into the country --

Mr. Mica. No, they are not.

Ms. Burriesci. -- yes, we take their prints for individuals coming into the country. Visa Waiver Program or visa, we're taking people's prints and we're running checks on them.

Mr. Mica. A French citizen who comes into the United States is coming in with a passport that might have photographic information embedded in it, but they don't have fingerprint.

Ms. Burriesci. But they're going to see a CBP officer and they're going to have their fingerprints taken.

Mr. Mica. Every French citizen who comes in?

Ms. Burriesci. Yes, sir.

Mr. Mica. And we have the capability at every border to capture that, and we're doing it with all foreign nationals that

are coming in?

Ms. Burriesci. The person is going to provide their prints right there at the POE, and we are going to run checks.

Mr. Mica. And Ms. Kephart is saying no.

Ms. Burriesci. We read their e-Passports and pull up their digital photo. So we're not lifting fingerprints from the passport; we're actually taking it from the passenger.

Mr. Mica. But they're not embedded in that, so you don't know what --

Ms. Burriesci. So most countries -- not most countries. Most e-Passports, if you do have fingerprints on the chip --

Mr. Mica. Yes. But, again, you're saying "most," not "all." And we don't do this with all, and we have no capability for all.

Ms. Burriesci. We do have the capability, sir, to read the e-Passport, and we do take --

Mr. Mica. But you keep talking about the e-Passport, and a lot of these are not e-Passports.

Let me ask you a question. When you go through and grant a visa, are the State Department folks who are doing the interviewing, are they all checking these folks against the U.S. no-fly list?

Ms. Burriesci. Yes, sir.

Mr. Mica. They are?

Ms. Burriesci. Yes. ESTA or visa, everybody gets run

against the terrorist watch list.

Mr. Mica. No, I didn't ask about the terrorist watch list.

Ms. Burriesci. Oh, did I misunderstand?

Mr. Mica. I asked about the no-fly list. I think there's --

Ms. Burriesci. The no-fly list is a subset --

Mr. Mica. -- 400,000 people.

Ms. Burriesci. I'm sorry. I don't mean to interrupt. The no-fly list is a subset of the overall terrorist watch list.

Mr. Mica. But my question was the no-fly list.

Ms. Burriesci. Yes, they are run against the no-fly list.

Mr. Mica. Okay.

And the problem you have is, we've seen with the latest incident we have certain protections, we had an interview of this individual, and that individual defied us. I mean, the same system you put in place we may be putting in place for visa waiver. You don't know what is in people's hearts and minds. These people are already, some of them, are -- one was embedded, one came in, and it's very difficult.

I don't have time to get into profiling, but there's some commonality to all of these folks. I won't get into that today. And I think we have to go beyond what we're doing now or we're not going to stop these individuals.

And I yield back the balance of my time.

Mr. Mulvaney. [Presiding.] I thank the gentleman.

We'll now recognize the lady from the District of Columbia,

Ms. Holmes Norton, for 5 minutes.

Ms. Norton. Thank you very much, Mr. Chairman.

I'm going to tell you, because I represent the Nation's capital, my district is caught both ways. On the one hand, we have very much approved the Visa Waiver Program. About the only tourists who don't come to the Nation's capital are international tourists -- that is to say, where there are more to come, on the one hand. And yet the Nation's capital is a major terrorist target. So that balance is very difficult for us.

On the terrorist watch list, Ms. Burriesci, you have been asked endlessly about the numbers on that list or the no-fly list. I am far less interested in the numbers than I am in the controversy surrounding that list.

Those who want people to be able -- and, by the way, there is a bipartisan bill, Peter King's bill, that would say, once you get on that list, you can't buy a gun. I am cosponsor of that bill. But, of course, there have been attempts to pass a "no gun if you're on that list," tries here in the House and the Senate.

Since 9/11, there has been endless controversy that those who want people to be able to buy guns no matter what have, frankly, used, and that is the inaccuracy -- the so-called inaccuracy, because that's really my question -- of the terrorist watch list and the no-fly list.

Could I ask you, what attempts have been made to address the accuracy issue that has now sent some people -- I think the

ACLU is in court on the inaccuracy of the issue on behalf of some people who were on the list who shouldn't have been on the list. Can you give us any information on how or what you are doing to clean those lists so that they are accurate?

Ms. Burriesci. Yes, ma'am. Thank you for asking that question.

Not only are there robust criteria to even get on that list, but that list is reviewed regularly by the Terrorist Screening Center that owns it --

Ms. Norton. So, because I only have 5 minutes --

Ms. Burriesci. -- to make sure that --

Ms. Norton. So it's reviewed regularly. And does that mean that you are regularly putting on and removing names and that you believe that the list is basically accurate?

Ms. Burriesci. Ma'am, there are people that get on the list and change status on the list on a daily basis.

Ms. Norton. How about people who have the same name? You know, we always talk about people named John Kennedy or some such name, Eleanor Holmes Norton maybe. Do you deal with people who have common names?

Ms. Burriesci. So there is something called the DHS Traveler Redress Inquiry Program. It is a one-stop shop for the -- it's operated out of TSA, but it's a one-stop shop for all travelers.

Ms. Norton. If you are on the list and shouldn't be on the



list, is there an appeal process so you can get off the damn list?

Ms. Burriesci. I'm sorry?

So you can apply through TRIP if you feel that you've been --

Ms. Norton. So there is an appeal process.

Ms. Burriesci. If your travel has been delayed, you can apply there. And if you're not that Burriesci --

Ms. Norton. I wish you would provide --

Ms. Burriesci. -- then you get a number that you --

Ms. Norton. I wish you would provide us some information on the process being used so the chair will have it to check on the accuracy, because I have another --

Ms. Burriesci. Certainly.

Ms. Norton. -- question.

Ms. Burriesci. Certainly.

Ms. Norton. It's on the EB-5 program. Again, my district has used the EB-5 program. You know, of course, that that is a program that allows investment in exchange, I believe, for a visa. And you have to say that you're going to provide 10 permanent jobs. There are things that have been built in the District of Columbia, big things, using that program.

How are those people vetted, EB-5 investment visas? Do they go through the normal visa process, or do they go through some other process?

Ms. Burriesci. I know vetting is done on those, but I don't have the specifics on the EB-5. That's not one of the areas I

have concentrated on and have information. But that is something, certainly --

Ms. Norton. Ms. Kephart, do you know anything about that?

Ms. Kephart. I have in the past, and I'm really sorry, but I don't have it at the --

Ms. Norton. Mr. Chairman, could I ask that that information be provided to this committee?

This has been a popular program here and across the United States. We need more information on visas in connection with that program, as well. It's not only the person; it's relatives that can come in.

Thank you very much, Mr. Chairman.

Mr. DeSantis. [Presiding.] We will be doing a hearing on the various visa programs, and I think that that will obviously be one that will be grist for the mill.

Okay. The chair now recognizes the gentleman from North Carolina, Mr. Meadows, for 5 minutes.

Mr. Meadows. Thank you, Mr. Chairman.

And thank each of you for your testimony.

Ms. Burriesci, let me come to you and follow up where Mr. Jordan left off on visa overstays.

In part of your testimony here today, you said you're making progress, that the quality of the data with regards to visa overstays is improving, I think. Is that correct?

Ms. Burriesci. Yes, sir.

Mr. Meadows. Okay. So if the quality of the data is improving and yet -- so you're able to testify to that, but you have no idea how many people overstay their visas. Do you have any idea? A ballpark?

Ms. Burriesci. Sir, we have preliminary numbers --

Mr. Meadows. And what would those be?

Ms. Burriesci. -- that the Department has compiled, and we are doing a thorough review of those numbers because we know how important they are. The Secretary has --

Mr. Meadows. Well, the Secretary -- let's get to that. The Secretary, in testimony --

Ms. Burriesci. -- ensured we do our due diligence on these numbers.

Mr. Meadows. No, but the Secretary, in sworn testimony before Congress in 2013, said that she would get them to Congress by December of 2013, and here we are almost 2 years later. So how long does it take to verify the numbers?

Ms. Burriesci. Sir, we know how important these numbers are, and we --

Mr. Meadows. That's not what I asked. I said, how long does it take to verify the numbers?

Ms. Burriesci. Well, at that time, we were still looking back at data that was from where the systems were not working well together. And now they are --

Mr. Meadows. Okay. Is it true --

Ms. Burriesci. -- better at giving us additional --

Mr. Meadows. All right. Is it true that you have an internal memo that goes through your agency, or at least to some in your agency, that would indicate the number of visa overstays?

Ms. Burriesci. Yes, sir. It --

Mr. Meadows. I thought it was. I have information that would indicate that it is. So what number is on that internal memo?

Ms. Burriesci. It is a draft interim entry/exit --

Mr. Meadows. That's not what I asked. That's a great answer to a question I didn't ask.

Ms. Burriesci. I'm sorry.

Mr. Meadows. What number is on that internal memo?

Ms. Burriesci. I can --

Mr. Meadows. Ballpark. I'll give you plus or minus 10,000. What ballpark?

Ms. Burriesci. I'll take that back to the Department, sir.

Mr. Meadows. Is it less than a million?

Ms. Burriesci. Sir, I will --

Mr. Meadows. Have you seen the memo?

Ms. Burriesci. I have, but it has been a little while since I have seen it.

Mr. Meadows. All right. So you have seen it. You looked at a number. Was the number greater than a half-million?

Ms. Burriesci. Sir, I don't have a number to --

Mr. Meadows. So you're refusing to answer the question. It's not that you don't know. Is that correct?

Ms. Burriesci. Because the numbers are still going through finalization, I'm not authorized to provide a draft number.

Mr. Meadows. Okay, but Federal law requires that you report that to Congress, does it not?

Ms. Burriesci. Yes, sir, the Department is responsible to do that.

Mr. Meadows. So at what point are you going to comply with Federal law?

Because, in 2011, the number was 1.6 potential visa overstays -- million, 1.6 million. In 2013, according to GAO, it was potentially 1 million visa overstays. How many visa overstays does it take to take down the Twin Towers?

RPTR MAAR

EDTR SECKMAN

[12:03 p.m.]

Ms. Burriesci. Sir, I can't answer that.

Mr. Meadows. So when is this committee going to get the information on visa overstays?

Ms. Burriesci. I understand the urgency that you're asking that question. And I'll make sure that that gets back to my front office.

Mr. Meadows. Listen, they already have the request. At what point are you going to comply with Federal law and give it to this committee? At what point? I mean, or maybe I'll ask it a different way: What justification do you have to violate Federal law?

Ms. Burriesci. Sir, I will take back exactly what you're asking and make sure that my front office is aware --

Mr. Meadows. Do we have to subpoena the numbers?

Ms. Burriesci. I don't have a better answer for you today. I'm sorry, sir.

Mr. Meadows. All right. So if we're looking at the visa overstays -- and we're sitting here debating about a Visa Waiver Program, and yet the very instance of visa overstays and the potential terrorist threat that accompanies that, you're tracking that, and yet the last information that Congress got that was

reliable was 1994. Do you not see a problem with that?

Ms. Burriesci. I think you should receive the data as soon as it is available. And I will take that back to the -- and provide it to my department's front office and make sure that they understand exactly what you're asking.

Mr. Meadows. Let me finish by asking, would you think 30 days would be reasonable enough to vet the numbers?

Ms. Burriesci. I'm not sure. I don't have a timeframe. But I want to make sure that --

Mr. Meadows. So let me make sure I understand this correctly. You can sit here and give us sworn testimony that you're vetting with unbelievable surety from a national security risk all the potential people coming from abroad here and that you can vet those as it relates to national security risk, but you can't vet the number of visa overstays with any degree of certainty in the 2-year period?

Ms. Burriesci. Sir --

Mr. Meadows. Was that your testimony?

Ms. Burriesci. No, sir. We are vetting against law enforcement and counterterrorism and international databases. That is the screening aspect --

Mr. Meadows. How hard is it to figure out how many overstays we have? That should be easy.

Ms. Burriesci. Yes.

Mr. Meadows. You got one document; you got one that doesn't

match up. What is the difference? It's simple mathematics. I yield back.

Mr. DeSantis. The gentleman yields back.

You got to do better than that, Ms. Burriesci. This is not inspiring a lot of confidence. And I think that more questions have been raised than answered.

I will now recognize Ms. Lujan Grisham for 5 minutes.

Ms. Lujan Grisham. Thank you, Mr. Chairman.

And, quite frankly, you just stole my opening statement. I mean, we are all here wanting to do the very same thing, to highlight the vast, productive, high-level security effort that, quite frankly, outside sources have done a far better job identifying our strengths than certainly anybody from the administration today on this panel or prior to this panel.

And in this job, it is our job to make sure that the information and sources that we are seeing, reading, evaluating, gathering, that you can confirm or deny those so that in that reporting process -- whether it be through testifying before this committee or providing those reports -- that we can do our job effectively by assisting you with policy shifts that enhance your opportunities.

But what we're getting here today is "I'm not sure," "I don't know," "can't do it," "haven't seen it," "can't really tell you." And I'll tell you this, with only three major databases, as I understand it, and doing a quick search while I've been sitting



in this committee for the past 30 minutes, I can tell you what the Wall Street Journal says. The Wall Street Journal says that there are 16,000 names on the watch list. On TIDE, there's about 1 million people and that there's a much smaller -- they didn't give me a number -- on the TSA no-fly list. Now, I don't consider that my staff or anybody on this committee should be using that information as the data points.

But if that's the only place we're getting it, then, Mr. Chairman, I think you should subpoena the Department because my constituents expect me, particularly after the changes that we've made to the Visa Waiver Program, that if you're going to be reporting to me, what confidence do I now have, Secretary, that you're actually going to provide those reports and that our enhanced screenings so that we're evaluating now the threat, the risk of terrorism, that you can do that? With only three lists, my expectation is those numbers would be rote to you, whether or not they're specifically your responsibility out of Homeland Security because we have a Homeland Security Department for exactly those reasons, where we consolidated these efforts and we enhanced the opportunity for collaboration. And you've given me no confidence based on your testimony that you are leading that effort in any meaningful or remarkable way.

Now, I hope I'm wrong. So I'm expecting you and this administration to give this committee and Congress the kind of assurances and security about our screening processes that we

deserve and that this country deserves. But I'm really disappointed by this hearing. And I was hoping that I wouldn't be. And, in fact, to that point, just exactly what are you going to do and how are you going to proceed by giving us credible and confident information about assessing the risk, given that one of the issues I get concerned about is the fact that the countries that we're concerned about, the Iraqi and Syrian borders are so porous, how are we going to track folks and what kinds of things can you -- without telling me that I should get a classified briefing, and I certainly don't want you to breach any of those classified or protected information. But give me a sense that you are actually doing your job and have some ideas about just exactly how you're going to increase that assessment based on that legislation.

Ms. Burriesci. To address several of your points, the action that I'm going to take is going back to the authoritative source for the Terrorist Screening Center to make sure that you get the accurate -- to make sure the committee members get the accurate numbers. I have a host of stats here, and I just didn't have those on my page.

Ms. Lujan Grisham. That wasn't my question either. I want to talk about the porous borders. You tell me now about the next phase. So I'm disappointed in the current efforts clearly, clearly. I think I can say the vast majority of this committee is. Now tell me about the next phase. Where are you in being

prepared to deal with very tough issues? I don't want to diminish those. But where are you in helping us identify better ways to deal with a pretty difficult problem, just given that one example? You've had many today. So the fact that people can travel between those countries which are high-risk areas and we don't know about it, what are you going to do about that from a data security management perspective? Recommend to me.

Ms. Burriesci. One of the things that you saw in the White House's announcement last week is asking additional questions and enhancing ESTA further to be able to identify travel that doesn't have --

Ms. Lujan Grisham. Give me a specific.

Ms. Burriesci. -- a nexus to the United States, which is where, I agree, if there's not a nexus to travel, continuous travel departing from the United States to go to any of those countries, it is much harder for us to find that information. If our foreign partners, whether in a VWP country or not, but if our foreign partners are not also sharing that information with us -- and, thankfully, our VWP countries are, when they know that there's a foreign terrorist fighter, sharing that with us -- then, yes, that is where that vulnerability lies.

Ms. Lujan Grisham. And, Mr. Chairman, I'm out of time too. You've been incredibly -- we want you to answer. And I agree that you are -- you are in our communication now giving me a sense that you understand the problem. And I appreciate that. And I

didn't mean to make that sound demeaning. But this is a significant problem.

But what are you doing about it? Give me one, give me one specific that you can in the context of this hearing so I know that you're on the right path because that's what I need to explain to my constituents: this is what is happening.

Mr. DeSantis. The gentlelady's time has expired. We have kind of gone round and round.

Why don't you provide the answer in writing because I don't think we've gotten very good answers right now.

[The information follows:]

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

Mr. DeSantis. And I don't know if it's a lack of preparation or whatnot. I think it's a good question. So the gentlelady's time has expired.

Ms. Lujan Grisham. Thank you, Mr. Chairman.

Mr. DeSantis. I'm going to recognize the gentleman from North Carolina for 5 minutes, Mr. Walker.

Mr. Walker. Thank you, Mr. Chairman.

I appreciate the opportunity.

Mr. Jenkins, you haven't been able to participate a whole lot, but I still wanted to recognize you and thank you for being here. You do great work.

Mr. Gude, you stated earlier that when we make decisions, you said: It is ignorant when we make decisions based on incomplete information.

The statement, "Americans are dying right now because of the existence of Guantanamo; closing it responsibly will save American lives," do you agree with that statement?

Mr. Gude. I think it has lessened currently as a terrorist recruiting tool. But I certainly think that in the past, it has been a substantial recruiting tool for terrorists.

Mr. Walker. I don't know if that was a yes or no because that was actually your statement. You also said this: President Barack Obama has done more in a few short hours to protect the security and uphold the values of the United States than his predecessor did throughout his long 8 years in office.

Do you agree that statement is true? Or is that maybe an ignorant statement when you didn't have all the complete information?

Mr. Gude. No, I remember saying that. And I clearly believe that. It was in response to the President's executive orders on his first full day in office to close down the black site prisons, to end torture, and establish a process to close Guantanamo.

Mr. Walker. Would you agree, though, we have more information now after 7 years?

Mr. Gude. Well, I think that a lot of time has passed.

Mr. Walker. It has. The last statement that you made in the past, and I want to hit a couple you made today. You said America is back and ready once again to lead the community of nations toward a future that is both more secure and more free. It doesn't seem to be working out that way right now, does it?

Mr. Gude. I think there are clearly threats that we as a country and we as an international community face. But, look, I think that we also forget the state of the world as it existed in early 2009 and late 2008. And I fully, fully believe that the United States is in a stronger position now than it was then.

Mr. Walker. So basically would it be fair to say you believe right now we're safer as a country than where we were 7 years ago?

Mr. Gude. Yes.

Mr. Walker. Okay. Thank you for being on record with that.

Today, you said in regard to Islamic, you said it's impossible to state so boldly that ISIS is a religious sect of Islam. You said it's not. How can you be so bold, in fact, you said you used your word and said it was ignorant to think that way. And you even said we need to eradicate such ideology. I find that interesting that you would talk about not the eradication of ISIS but the eradication of such ideology. Do you think ISIS would agree with you that they're not a religious sect of radical Islam?

Mr. Gude. I think ISIS is quite clearly trying to represent Islam. But I don't believe that it does. And I think the overwhelming majority of Muslims in the world would agree with me.

Mr. Walker. How many millions would you suggest hold to this radical sect of Islam?

Mr. Gude. I can't --

Mr. Walker. Would you say that there's millions?

Mr. Gude. No.

Mr. Walker. You don't believe there's millions that hold to that sect. I would have to share some information accordingly. My concern is that here you are today as a witness talking about the security of our country, the no-fly list, some of the other things. And yet the statements that you're on record seem to be overwhelmingly partisan. And even today, you're on record saying

that our country is safer now than where it was even though we're having explosions as far as this no-fly list, this thing, we've got Visa Waiver Programs we're trying to figure out. But you believe that right now we are safer as a country than where we were even when all this information wasn't even discovered?

Mr. Gude. Yes, I do.

Mr. Walker. Okay. I have no further questions. Mr. Chairman, I yield back.

Mr. DeSantis. The gentleman yields back.

The chair now recognizes the gentleman from South Carolina for 5 minutes, Mr. Gowdy.

Mr. Gowdy. Thank you, Mr. Chairman.

Ms. Burriesci, how many visa overstays are there in the United States?

Ms. Burriesci. Sir, as I said earlier, I don't have that statistic with me.

Mr. Gowdy. Let's use the President's statistics that there are 11 million, and 40 percent of them would be visa overstayers, as opposed to border crossers. Do you take exception with what the President said? Or can we just use that as kind of a baseline?

Ms. Burriesci. I, in all honesty, I don't recall what the President said about it. But I'm not sure where those stats are coming from. I just don't have it with me.

Mr. Gowdy. So you cannot tell me how many visa overstayers are in the United States?



Ms. Burriesci. I don't have that information with me.

Mr. Gowdy. Is there a list?

Ms. Burriesci. There is an interim draft entry/exit report which has overstay data in it.

Mr. Gowdy. No. No. Are --

Ms. Burriesci. I --

Mr. Gowdy. -- there a list of names of visa overstayers?

Ms. Burriesci. Oh, so anybody who has overstayed, regardless of if it's a visa or a Visa Waiver Program, those individuals have final removal orders and our Immigration and Customs Enforcement agency receives that list.

Mr. Gowdy. So there's a list?

Ms. Burriesci. Yeah.

Mr. Gowdy. Is that a list shared with federally licensed firearms dealers?

Ms. Burriesci. I am not sure.

Mr. Gowdy. Well, it is actually currently against the law for anybody who is here illegally or unlawfully to possess or purchase a firearm. And I understood in Mr. Gude's opening, he wants to create a new list of prohibited persons, which just struck me that maybe we ought to find out how good a job we're doing with the current statutes that we have. Do you know how many prosecutions that there were for, say, the last 3 years for folks who tried to purchase a firearm that were not here legally?

Ms. Burriesci. No, sir. But I can ask ICE that question.

Mr. Gowdy. Well, it wouldn't be ICE. It would be the Department of Justice.

Ms. Burriesci. Then I wouldn't have information because I'm with DHS.

Mr. Gowdy. Well, and the good news for us is we do have that information. And it's an incredibly small number of prosecutions, like less than 100. So you can understand some of our skepticism when we hear folks calling for a new category of prohibited persons that cannot purchase or possess firearms when we've done such a dreadful job with the current categories. It is currently unlawful, illegal for people who are not legally in the country to purchase or possess firearms. And my question is, how many of those folks have been prosecuted?

Ms. Burriesci. I would have to --

Mr. Gowdy. And the number is really small. Let me ask you another question about the terrorism list. What process is afforded a U.S. citizen, not someone who has overstayed a visa, not someone who crossed the border without permission, but in the American system, what process is currently afforded an American citizen before they go on that list?

Ms. Burriesci. I'm sorry, there's not a process afforded the citizen prior to getting on the list. There is a process should someone feel they are unduly placed on the list.

Mr. Gowdy. Yes, there is. And when I say "process," I'm actually using half of the term due process which is a phrase

we find in the Constitution, that you cannot deprive people of certain things without due process. So I understand Mr. Gude's idea, which is wait until your right has been taken from you and then you can petition the government to get it back. I understand that that's his idea. My question is, can you name another constitutional right that we have that is chilled until you find out it's chilled, and then you have to petition the government to get it back? Is that true with the First Amendment?

Ms. Burriesci. Sir, there are strict criteria --

Mr. Gowdy. That's not my question, ma'am. That's not my question. My question is what process is afforded a United States citizen before that person's constitutional right is infringed? And he's fine with doing it with the Second Amendment. My question is, how about the First? How about we not let them set up a Web site or a Google account? How about we not let them join a church until they can petition government to get off the list? How about not get a lawyer? How about the Sixth Amendment? How about you can't get a lawyer until you petition the government to get off the list? Or, my favorite, how about the Eighth Amendment? We're going to subject you to cruel and unusual punishment until you petition the government to get off the list. Is there another constitutional right that we treat the same way for American citizens that we do the Second Amendment? Can you think of one? Can you think of one?

Ms. Burriesci. I don't have an answer for you, sir.

Mr. Gowdy. I'm out of time. But I've got a couple other questions. And I'm sure the chairman will indulge me. Do you know whether the female terrorist in California was subjected to an in-person interview before her K visa was issued?

Ms. Burriesci. As part of the visa process, yes, that individual was interviewed.

Mr. Gowdy. Do you know who interviewed the person?

Ms. Burriesci. I do not have that information. That would be a question to ask the State Department.

Mr. Gowdy. Do you know how long the interview took place, how long it lasted?

Ms. Burriesci. That would also be a question for the State Department. They conducted the interview.

Mr. Gowdy. Do you know what investigation, if any, was done into her in terms of education, employment, social media?

Ms. Burriesci. Those are all questions that should be referred to the State Department.

Mr. Gowdy. Who has her immigration file?

Ms. Burriesci. USCIS would have the immigration file.

Mr. Gowdy. I thought USCIS was a subset of DHS?

Ms. Burriesci. Yes.

Mr. Gowdy. And you're with DHS, so why wouldn't I ask you?

Ms. Burriesci. So the process would start with USCIS for a K-1 visa.

Mr. Gowdy. I know. And then it goes to the State

Department.

Ms. Burriesci. And then it goes to the State Department, which is where all the checks to see if that individual is eligible for the K-Y -- K-1 visa -- I'm sorry, I even lost my own train of thought.

Mr. Gowdy. I know exactly where you're going.

Ms. Burriesci. If someone is eligible for the K --

Mr. Gowdy. Mr. Rodriguez was with us yesterday.

Ms. Burriesci. Yes. Then the individual would travel to the United States. Of course, there's vetting done on the individual as they travel as any individual is. And then, within 90 days, they can apply for legal permanent residency. And then that is also when USCIS would get involved and do biographic and --

Mr. Gowdy. I understand the process. And I'm out of time.

I'm just going to make this point before I yield back to the chairman: There's an application process -- we're not even talking about the Visa Waiver Program; we're talking about the process where there actually is a visa issued -- there's an investigation; there's an interview; there's another interview; and yet we still got it wrong. And I would think the chairmen, one of whom is sitting beside me, and Chairman DeSantis and Ranking Member Lynch, I would think that they would be very interested in her immigration file to find out what questions, perhaps, weren't asked that should have been, so we can learn lessons after the 14 are dead, and hopefully, we can learn before there are

14 more dead. So I would encourage you to ask your boss to make that file available to both the ranking member of the full committee, the chairman of the full committee, the ranking member of the subcommittee, and the chairman of the subcommittee.

And, with that, I yield back to the chairman.

Mr. DeSantis. The gentleman yields back.

So can you provide that by close of business Friday?

Ms. Burriesci. I'll take that back. Thank you.

[The information follows:]

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

Mr. DeSantis. Can you do it, though?

Ms. Burriesci. I would love to say yes, but I'm not in charge of that. So I want to make sure, if not shorter, yes.

Mr. DeSantis. Before I recognize the ranking member of the full committee, you can't give us the number of people who are on expired visas? You have staff. Can they just call DHS so we get it before the hearing is over? Do you want to take a 5-minute recess to make that phone call? This should not be very difficult.

Ms. Burriesci. To find out --

Mr. DeSantis. We have had a number of questions about how many people are here on visa -- have overstayed their visas. And we've not been able to get even a ballpark estimate about that. I would imagine somebody in this big, sprawling Department has got to some type of information in that regard. So my question to you is, is there a way that you can get that to us today? Can you make a phone call to do it? Can one of our staff make a phone call?

Ms. Burriesci. I will make a phone call. I'm happy to do it.

Mr. DeSantis. Do you want to recess for 5 minutes and you'll do it?

Ms. Burriesci. I'm happy to make a phone call.

Mr. DeSantis. Okay. Well, the hearing stands in -- so we're not going to get --

Mr. Chaffetz. Will the gentleman yield?

Mr. DeSantis. We'll recognize --

Mr. Cummings. No, I don't mind her making a phone call. I appreciate the courtesy, Mr. Chairman. But if you want to make a phone call to help us get issues resolved, I don't mind waiting. I have no problem.

But thank you, Mr. Chairman. I appreciate it, both chairmen.

Mr. DeSantis. We will stand in recess for 5 minutes. And we'll resume at 12:31.

[Recess.]



RPTR MAAR

EDTR HOFSTAD

[12:43 p.m.]

Mr. DeSantis. We'll now come to order.

The chair will recognize the ranking member, Mr. Cummings, for 5 minutes.

Mr. Cummings. Mr. Chairman, before we do that, I want to see if she got the information. I don't want that taken off my time.

Did you get the information?

Ms. Burriesci. I did get some information on the VWP overstay numbers. It's at -- I couldn't get everything.

Mr. DeSantis. What's the number?

Ms. Burriesci. So the VWP overstay rate is -- I'm sorry -- for citizens of VWP countries, the overstay rate is around 2 percent.

Mr. DeSantis. So that means people that have stayed past 90 days when they came in on the Visa Waiver Program? Or is that people who --

Ms. Burriesci. Citizens -- that's a great question. I believe that is true, yes, for business and tourism reasons, so 91-plus days.

Mr. DeSantis. Okay. But we will need that in writing. And we want to see where you're getting those numbers, because I know

there will be people, probably up here, who will disagree with how those numbers were arrived at.

And, with that, we'll recognize Mr. Cummings for 5 minutes.

Mr. Cummings. Thank you very much, Mr. Chairman.

Ms. Burriesci, as you know, 2 days ago, the House passed legislation to strengthen the security of the Visa Waiver Program, H.R. 158, the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015. Based on the recent terrorist attacks in Paris and San Bernardino, Congress needs to act to close the security gaps in the VWP program, and it's my sincere hope that the Senate will take up the House bill and send it to the President's desk as soon as possible.

Do you believe that H.R. 158 will help DHS' efforts to implement the Visa Waiver Program?

Ms. Burriesci. I assume that's directed at me?

Mr. Cummings. Yes, ma'am.

Ms. Burriesci. Yes, absolutely, sir. It always helps to codify some of the enhancements in statute because that helps other countries be able to point to our statute and help when they need to make legal changes in their own systems.

And the law has a lot of practical security value -- I'm sorry, not the law -- H.R. 158 has a lot of practical security value measures in it. So I do think it will assist security, yes, sir.

Mr. Cummings. And the administration called on Congress to

enact some of the reforms that are included in H.R. 158. For example, the bill would require that all travelers in the Visa Waiver Program be screened against INTERPOL databases to identify high-risk travelers.

Will putting this requirement in the statute help DHS with encouraging compliance with countries participating in the Visa Waiver Program?

Ms. Burriesci. Yes, the requirement that VWP countries use that database to screen, themselves, for their inbound travelers, absolutely. We do it already here in the United States.

Mr. Cummings. Now, the administration also requested that Congress act to accelerate the requirement for 100 percent of VWP travelers to use e-Passports. Why is it important for the VWP travelers to use an e-Passport?

Ms. Burriesci. So an e-Passport includes a chip on it, it includes the biographic information on a passport, as well as it holds a digital photo. It's harder to -- what's the word for fraudulently mess it up? Sorry for blanking out there for a second. And, therefore, they are more secure, they have more secure features in them.

So we are encouraged by the fact that all VWP countries currently issue e-Passports. And CBP has the capability to read e-Passports at our POEs, at our ports of entries.

Mr. Cummings. You know, Ms. Kephart, I missed your testimony, but I want to make sure we're clear on some things

that go to the truth, the whole truth, and nothing but the truth.

Ms. Kephart. I understand.

Mr. Cummings. And you're sworn, you know. I want to remind you of that.

And the American people get kind of frustrated when they see witnesses come before them who might have an interest in themselves or their companies making a lot of money off of their testimony in some way or another.

I'm not saying that's what you're doing. I just want to be clear. I think it's very important to not only the integrity of this committee but the integrity of this Congress and the people who are watching this that we know exactly what your situation is.

Now, I want to reiterate, you are the director of homeland security solutions for -- what's the name of the company?

Ms. Kephart. It's MorphoTrak, sir.

Mr. Cummings. And your job is to sell biometric technology and systems to the government. Is that correct?

Ms. Kephart. As of 3 months ago.

Mr. Cummings. Yeah, but you're employed.

Ms. Kephart. I spent years doing --

Mr. Cummings. You're getting a paycheck.

Ms. Kephart. Yes, sir.

Mr. Cummings. Right. Okay.

Ms. Kephart. Absolutely, I do.

Mr. Cummings. That's the big deal. You're getting a paycheck.

Ms. Kephart. Right. And I am happy -- I filled out the form in my personal capacity. I clearly made a mistake, as Mr. Cartwright pointed out earlier. And I am happy to go back and have our legal counsel -- engage them and do it correctly.

Mr. Cummings. Well, I just want to make it clear so that the people watching this --

Ms. Kephart. I didn't do it on purpose, sir.

Mr. Cummings. Ma'am, I'm not saying you that did it on purpose.

Ms. Kephart. Yeah.

Mr. Cummings. But I'm telling you that when you come before us --

Ms. Kephart. I understand.

Mr. Cummings. -- and you sign these documents, you should pay close attention to what you're doing. Because I can tell you, there are people on this committee, under certain circumstances, that would refer you for some criminal action. I'm just telling you. I've seen it many times.

And so I don't know whether you -- I mean, it doesn't take a rocket scientist to read this -- this is a pretty simple form.

And so, in fact, your company has millions of dollars in Federal contracts. Is that incorrect? I see you're frowning up, but am I wrong?

Ms. Kephart. We have Federal contracts, yes, sir.

Mr. Cummings. Does it amount to millions of dollars?

Ms. Kephart. I actually don't know the answer. A few million dollars, yes.

Most of our work actually is with State and local. We provide the ABIS systems to many of the States that are represented here today, are the criminal biometric systems. Federal, we don't have much of a footprint. We do at DHS recently. We did acquire a USCIS Live Scan for our biometrics, yes.

Mr. Cummings. Okay. So you're telling me you got a couple billion --

Ms. Kephart. But not with Customs and Border Protection, who I --

Mr. Cummings. Ms. Kephart, I only have a few minutes. I only have a minute.

Mr. DeSantis. Actually, your time has expired. So are you going to --

Mr. Cummings. Well, I just want to have as much time as Mr. Gowdy had. He had 7 minutes. May I have 1 more minute?

Mr. DeSantis. Well, we have a classified briefing in a few minutes. I have at least one more witness -- three more witnesses on my side. So you made your point. I get it. We bring contractors here all the time that do that.

So the gentleman's time has expired.

I recognize the chairman of the full committee for 5 minutes.

Chairman Chaffetz. It is my commitment to the ranking member that we will work together to rectify this. I don't care what side of the aisle, where you are in the political spectrum, you do not come before the United States Congress and fill out a very simple form and get it wrong. Okay? Ever.

Ms. Kephart. I apologize.

Chairman Chaffetz. And that may not cut it. I appreciate the apologies, but that may not cut it. And I'll work with the ranking member on that to follow up. There's no excuse for that.

Ms. Burriesci, who do you report to?

Ms. Burriesci. I report to Assistant Secretary Seth Stodder.

Chairman Chaffetz. And this report that we've been talking about, how long has it been in process?

Ms. Burriesci. It has been in process for, I believe, over a year. I don't have the exact timeframe, but it's over a year.

Chairman Chaffetz. And are you participant in finalizing that report?

Ms. Burriesci. It has been months since I have seen that report.

Chairman Chaffetz. Who is in charge of that report?

Ms. Burriesci. It is a CBP report.

Chairman Chaffetz. Give me a name. When I send the subpoena that was suggested by the Democrats, who do I send it to? I'm going to send it to the Secretary, but who is responsible for

this report?

Ms. Burriesci. Sir, I believe, if you want -- that question, I believe the Secretary of Homeland Security.

Chairman Chaffetz. Okay.

Let's move on. The entry/exit program, that's your responsibility, right, in part? You're in charge of screening. How is that coming along, the entry/exit program?

Ms. Burriesci. So, actually, we have a lot of good news on the biometric entry/exit front. And we had the pleasure of briefing your staff last week on those --

Chairman Chaffetz. I don't want to hear about staff briefings last week. I'm asking you -- it is currently law that we're supposed to have an entry/exit program, correct?

Ms. Burriesci. Sir, we have exit operational at 10 airports -- at 10 locations, sorry, today. We are --

Chairman Chaffetz. And there are how many airports overall?

Ms. Burriesci. There's hundreds of airports, sir.

Chairman Chaffetz. And so we have it at 10 of them. Okay.

Ms. Burriesci. I agree, it's not -- I acknowledge it is not nationwide, a biometric exit system, today. I acknowledge that.

Chairman Chaffetz. What percentage of the people leaving the country are you able to capture?

Ms. Burriesci. I may have that with me, but I have to look.

I do not have that. I'm sorry, I do not have that statistic with me.



Chairman Chaffetz. When will you give me that statistic?

Ms. Burriesci. I will try to get that to you within 24 hours if I can reach --

Chairman Chaffetz. Thank you.

Ms. Burriesci. -- the CBP. Absolutely.

Chairman Chaffetz. What percentage of the people coming into the country are fingerprinted?

Ms. Burriesci. I believe there are very few exceptions to who would not --

Chairman Chaffetz. I think you said earlier all of them.

Ms. Burriesci. Everybody gets fingerprinted upon entry. I think there are very few exceptions.

Chairman Chaffetz. Can you think of any exceptions?

Ms. Burriesci. For some diplomatic visas.

Chairman Chaffetz. What percentage --

Ms. Burriesci. And I believe there's one more, but I just can't --

Chairman Chaffetz. What percentage of the land entrants, people coming across on the land, what percentage of those fingerprints are captured?

Ms. Burriesci. I can come back with that.

Chairman Chaffetz. You were so certain before. You said it was all of them. So isn't the answer 100 percent or no?

Ms. Burriesci. There are a few exceptions. I know there are diplomatic visas, and I believe there may be some exceptions

for certain Canadians. And that's why -- I didn't intentionally --

Chairman Chaffetz. Yeah, but the problem is you are -- how long have you been in this role?

Ms. Burriesci. In my current role? Since 2012.

Chairman Chaffetz. I think we expect you to know this.

What about the seaports? If you come in on a cruise line, what percentage of those people are fingerprinted coming back in?

Ms. Burriesci. Sir, I know the policies and the processes. I'm getting asked a lot of very specific stats. And it's not that I don't want to share my stats. As soon as I can get back to the Department and the systems, run them and we get them, I'm happy to share any stats. I'm not trying to at all withhold information.

Chairman Chaffetz. Do you know what percentage of the passport chips work?

Ms. Burriesci. I didn't realize that they didn't work.

Chairman Chaffetz. Okay. So --

Ms. Burriesci. I'm sorry, I don't understand where you're --

Chairman Chaffetz. It's something like only 60 percent of the time those passport chips actually do work. You're supposed to be the expert on this. I mean, this should be just right off the top of your head. You're coming before Congress, and I recognize that you don't normally come and testify here, but

they've spent so much time briefing and making sure you get it right. You should know that the passport chips don't work. That's a big problem.

Ms. Burriesci. Sir, I spent ample time briefing and learning and making sure off the top of my head I knew the Visa Waiver Program and talked about all the security elements. I'm getting a lot of statistical questions that I just don't have with me. But, otherwise, I would absolutely share them with you. And, as I've said, I'm happy to get them to you. I just don't have them with me today.

Chairman Chaffetz. The questions that I just asked you, what's a reasonable time for you to get that information?

Ms. Burriesci. I will get them -- as soon as I have them, I will share them.

Chairman Chaffetz. Okay. I yield back.

Mr. DeSantis. The gentleman's time has expired.  
The chair now recognizes Mr. Hice for 5 minutes.

Mr. Hice. Thank you, Mr. Chairman.

Ms. Burriesci, I will just continue. What would it take for a country to be removed from the Visa Waiver Program?

Ms. Burriesci. Well, we have a host of things that we can do on a Visa Waiver Program that is not meeting standards, so termination is kind of where we would see the last resort. That doesn't actually help us --

Mr. Hice. Well, that's my question. What would be the last

resort? What would it take --

Ms. Burriesci. Termination would it be the last resort. I mean, that is where --

Mr. Hice. What would it take to be terminated?

Ms. Burriesci. -- there are strong security concerns or contradictory interests to the United States. That would lead to termination.

Mr. Hice. All right. That's pretty vague. "Strong security concerns," what does that mean?

Ms. Burriesci. So when we're reviewing a VWP country, when we go and do our reviews, and even through the continuous monitoring that occurs outside of reviews, we're looking at their counterterrorism standards, border security, law enforcement, immigration, and document issuance standards.

So if any of those became a concern to the United States, certainly a security concern, that would be one of the things that are considered, among other measures.

Mr. Hice. If I'm hearing you correctly, then, if any one of those issues that you just mentioned became a question for the United States, that country would be terminated?

Ms. Burriesci. Well, there's a big scale of whether something becomes a concern and whether it, you know, is of a level --

Mr. Hice. Well, you just said, if any of these were a concern, they would be removed. Is this not what you're saying

now?

Ms. Burriesci. Well, if something becomes a concern and -- it is in the interest of the United States to work with the countries and raise the security standards. So we have other measures besides termination. There's suspension, and there's provisional status. And we also have the ability to lower ESTA validity period, which is --

Mr. Hice. Okay. Well, let's move on. I have several questions.

Has removal ever taken place? Has termination taken place?

Ms. Burriesci. Yes, sir.

Mr. Hice. How often?

Ms. Burriesci. We have done it twice since 2000.

Mr. Hice. Okay. So it's happened twice.

Is there a penalty for a country that fails to share information regarding individuals who may pose a threat to the United States?

Ms. Burriesci. We can take a host of actions on a country that isn't sharing, but all the countries --

Mr. Hice. So there is a penalty.

Ms. Burriesci. Well, what I'm saying is there are lots of things we can do, and I've named some of them. We can change an ESTA period, we can put a country on provisional status, we can suspend a country, or we can terminate a country.

Mr. Hice. Is that all subjective, or is there a process?

When do you know when that occurs?

Ms. Burriesci. DHS would never do something without the consultation of State Department, as we do with all things for the Visa Waiver Program. And if something were certainly to rise to that level, we'd bring in our interagency partners, as well, even outside of just the State Department.

Mr. Hice. Okay.

Let's see. I'm assuming that -- well, let me ask you this. What about these individuals who are being radicalized who have not been to countries like Iraq or Syria? Is anything being done to monitor that group?

Ms. Burriesci. Countries that have been?

Mr. Hice. Individuals who have been radicalized but they have not gone to countries like Iraq or Syria, are these individuals being monitored in any way?

Ms. Burriesci. I mean, certainly, if we are aware, the FBI might have an investigation open on them. But, I mean, the greatest concern and the thing, you know, that certainly keeps me up at night is the individuals that we're not aware and that is their mindset and --

Mr. Hice. So you don't know if they're being monitored or not.

Ms. Burriesci. That I --

Mr. Hice. You don't know.

Ms. Burriesci. I don't know the answer to that.

Mr. Hice. Okay.

I'm assuming you don't know how many passports are reported stolen each year. Is that correct?

Ms. Burriesci. I don't know how many are reported stolen each year, but I know that --

Mr. Hice. Do you know what the procedure would be when a passport is reported stolen? How do we make sure that that stolen passport is not used fraudulently by another individual?

Ms. Burriesci. So for all manifest data that we receive, we are -- I'm sorry -- for all travelers coming into the United States, we are running that manifest data against the stolen and lost travel document. Absolutely. And that includes documentation -- sorry -- that includes records that the United States puts in, VWP countries put in, and other countries.

Mr. Hice. Do you believe the other -- well, it looks like my time has expired.

Mr. DeSantis. The gentleman's time has expired.

We do have this briefing, but I want to give Mr. Carter the last round. So we're going to recognize Mr. Carter for 5 minutes, and then we're going to recess because we do have to go over to the California hearing.

Mr. Carter. Thank you, Mr. Chairman. I appreciate this. And thank all of you for being here today.

Ms. Burriesci, let me ask you something. I'm still concerned about this overstay. And one of your other panelists

has noted in her written remarks that "the Visa Waiver Program tourist overstay issue remains. The GAO tells us that 43 percent of VWP tourists make up the overstay population in the U.S."

So 43 percent of all the overstay population in the U.S. comes from the Visa Waiver Program is what this is asserting. Would you agree with that, yes or no?

Ms. Burriesci. No. As I stated --

Mr. Carter. Okay. Okay.

Ms. Burriesci. -- earlier, it is around 2 percent.

Mr. Carter. No, but she's saying of all the overstay. So that's inclusive of all the other programs, as well.

But you brought us a number of 2 percent. Now, can you tell me what that number is? I mean, 2 percent of what?

Ms. Burriesci. I wasn't able to get all that while I was on the phone.

Mr. Carter. Okay. So you don't know if it's 2 percent of a million, 2 percent of 100,000?

Ms. Burriesci. I don't.

Mr. Carter. Okay. But can you get that for us?

Ms. Burriesci. I will take that question back.

Mr. Lynch. Will the gentleman yield?

Mr. Carter. I yield.

Mr. Lynch. The number is 20 million people per year. Two percent comes out to 400,000 per year overstaying their visas under the Visa Waiver Program.



Mr. Carter. Okay. And I'll reclaim my time.

Tell me, do you know what the average overstay is, what the overage length of time the overstay is?

Ms. Burriesci. That's going to vary. Because even if it's 1 day, it's an overstay.

Mr. Carter. But an average --

Ms. Burriesci. I don't have that information.

Mr. Carter. Okay. Can you get me that information? In other words, of all the overstay, that 2 percent of the -- what was it? 400,000 -- of the 400,000, the average overstay is 3 months, is 6 months, is 9 months, whatever it is.

And then also I'd like to know the longest. I mean, have you got somebody who's been on that list, that overstay list, for 3 years or 5 years?

But, most importantly -- and I hope you can answer this here today; you should be able to -- what are we doing about it? What are we doing about those people who are on that overstay list?

Ms. Burriesci. So when you become an overstay, you have a final removal order. And ICE, which is an agency, Immigration and Customs Enforcement agency within -- Citizenship, not Customs -- within DHS is responsible for removing those individuals.

Mr. Carter. So you turn it over to ICE, and ICE goes and looks for them?

Ms. Burriesci. Yes. ICE is the responsible agency to

remove overstays.

Mr. Carter. Okay. Can you tell me what ICE is doing about it? Are they out looking for them right now as we speak?

Ms. Burriesci. Every single day.

Mr. Carter. Every single day they're out looking for this person?

Ms. Burriesci. Every single day. Absolutely. And they are prioritizing those that are national security and public safety concerns first, because that's in the interest of the United States.

Mr. Carter. Okay.

And let me ask you this. What can we do to help you? What can we, as Congress, do to help you with this problem? Tell me. Tell me what we can do.

Ms. Burriesci. I am sure ICE has a long list of ways that you can help, and I'm sure they would be very encouraged to be asked that question.

Mr. Carter. You know, I'm bothered that -- "I just pass it off to ICE. It ain't my problem anymore. It's their problem."

Ms. Burriesci. No, I'm not trying to pass it off at all, sir. I just don't want to -- I want to give you a complete and comprehensive answer. It is a great question. We thank you for asking that question.

Mr. Carter. Okay.

All right. Let's shift gears here. Let's talk about ESTA,

the Electronic System for Travel Authorization. It's an automated, web-based system used to determine an alien's eligibility to travel without a visa in the United States for tourism and business.

Is this the only place, in the United States, or do other countries have this type of program? Are we the only ones with this type of program?

Ms. Burriesci. It's a reciprocal program. So United States citizens don't need a visa when we're traveling to VWP countries, as well.

Mr. Carter. So it is a reciprocal program with the other 38 countries.

Ms. Burriesci. Yes.

Mr. Carter. So they have an ESTA, as well. And you can fill --

Ms. Burriesci. I was going to say they might call it something else, but yes.

Mr. Carter. But it's basically the same thing. And you can fill that application out online, correct?

Ms. Burriesci. For some countries, yes.

Mr. Carter. So, once you're issued that ESTA, how long is it good for?

Ms. Burriesci. It's typically good for 2 years.

Mr. Carter. Two years. Do you think that needs to be tightened up?

Ms. Burriesci. So we have the ability to change the ESTA validity period today, but the important thing to remember is an ESTA is actually recurrently vetted. So, for the validity period of 2 years, if anything changes, if someone ends up on the terrorist watch list, for example, we know in real time, and we will revoke or deny that ESTA application.

Mr. Carter. I understand that, but 2 years is a long period of time.

Ms. Burriesci. Well, a business or tourist visa is 10 years. And every 2 years, we're going to --

Mr. Carter. But two wrongs don't make a right. I mean, come on now. Don't give me an answer saying, "Well, this is even worse."

Ms. Burriesci. Well, I think the fact that we're recurrently vetting is going to determine whether somebody -- if somebody becomes a national security concern, we get that information in real time, and we're able to take an action on it.

Mr. Carter. Okay. Mr. Chairman, I yield back.

Mr. DeSantis. The gentleman's time has expired.

The chair is going to recognize Mr. Lynch for 1 minute.

Mr. Lynch. All right. Thank you.

Ms. Burriesci, thank you very much. I know it's been a difficult hearing for you.

Those four men to your right, the well-dressed gentlemen

in the front row, do they work for you?

Ms. Burriesci. Some of them.

Mr. Lynch. Okay.

Ms. Burriesci. Not all of them.

Mr. Lynch. Well, do you have a numbers guy? Because you really needed your numbers guy today, or your numbers gal.

Ms. Burriesci. Well, I have the ESTA numbers, I have the ESTA denial numbers, I have the --

Mr. Lynch. Well, wait a minute. You had a whole bunch of numbers you didn't have, and we had to recess the hearing. So I have a feeling you're going to be back before this committee again. This issue is not going away. And I would just recommend, next time I want to see you walk in arm-in-arm with your numbers person.

Ms. Burriesci. I will have any list of stats for certain.

Mr. Lynch. Okay.

The other thing is this. I want to follow up on the gentleman's previous question. Twenty million people a year, 2 percent overstay rate, 400,000 people overstaying their visa. So, in addition to what the gentleman asked for, I would also like the country of origin of where those people are coming from and overstaying.

And is there a list, is there a list -- you say they prioritize, ICE prioritizes. Is there a list that we're running? Because, you know, obviously, the problem should be self-evident.

Thank you. I yield back.

Mr. DeSantis. And what we're going to do is we're going to reduce all the questions that we've asked, that we want the information, we're going to reduce that to writing. We're going to send that to you soon. And then you guys can respond to that in due time but, you know, not too long. It should be readily apparent.

And then I am going to make the additional request that the Department produce the file for the committee on Tashfeen Malik. We would like to get that next week. We very well may be back here next week, and that is very, very important for us to see so that we can evaluate as we move into other phases of oversight. When we're looking at our visa programs, we want to make sure -- I mean, clearly, we don't want a visa program that allows somebody like her to come into this country.

So Chairman Chaffetz is recognized.

Chairman Chaffetz. Ms. Burriesci, these visa overstays, you should have a list of every one of them, right, by individual name?

Sorry, I need you to say it for the record. Do you have a list of each of their names?

Ms. Burriesci. I personally don't, but the Department would have a list of individuals with final removal orders who have overstayed.

Chairman Chaffetz. So this is, in part, why we need a

entry/exit program, because you don't truly know if they've left, correct? You only know if they've left if they've traveled by airplane, correct?

Ms. Burriesci. We have a biographic exit system, but, certainly, including biometrics on exit is an additional certainty, yes.

Chairman Chaffetz. Where do you do that? What do you mean, "biographical"? What does that mean?

If you fly into JFK, you travel around, go to New York, and then you decide to go up to Toronto, are you telling me that you're capturing the names of who's leaving? Where do you actually capture the names of people that leave the country?

Ms. Burriesci. If it would help, we can provide something written that actually lays out the process of what occurs --

Chairman Chaffetz. I think I understand the process.

Ms. Burriesci. -- if that works.

Chairman Chaffetz. It does. I would appreciate that. We'll add that to the list.

Is it fair to say that, most ports, you don't capture who exits the country?

Ms. Burriesci. We get the manifest data, and we'll use that, and we use our arrival/departure information system. But --

Chairman Chaffetz. Do most people come into this country on airplane, or do they come in by vehicle and car?

Ms. Burriesci. I believe --

Chairman Chaffetz. Or vehicle, cars, and walking?

Ms. Burriesci. I would anticipate it would be air, but I don't know.

Chairman Chaffetz. Again, you're in charge of this stuff. And so when will you get us that information?

Ms. Burriesci. I'm not in charge of the operations. But I am in charge of working on the --

Chairman Chaffetz. You're in charge of screening. Your title says "screening" in it.

So if they come in on a Visa Waiver Program by air and depart not by air, what percentage of those people do you capture?

Ms. Burriesci. So that is what I would say is one of the gaps that we have acknowledged, if someone comes in by air and leaves by land, yes.

Chairman Chaffetz. And there are literally hundreds of thousands of people who may have come here legally but now they're here illegally, correct?

Ms. Burriesci. I don't have that number with me, but --

Chairman Chaffetz. Is it hundreds of thousands of people?

Ms. Burriesci. I don't have that information with me.

Chairman Chaffetz. The answer is yes, correct? I mean, Mr. Lynch laid it out there for you.

Ms. Burriesci. I recognize that I'm under oath, and I just don't want to provide misinformation to you. It is not that I



don't want to provide information to you.

Chairman Chaffetz. So it's somewhere between hundreds of thousands and potentially the low millions of people that came here legally through the Visa Waiver Program, the topic that we're discussing, and just decided they're not going to leave.

And you should have a list of those people, right? Do you share any of that -- who else gets that list? Who do you share that list with?

Ms. Burriesci. That list is shared with -- it's shared with interagency partners, and it's shared across -- yeah.

Chairman Chaffetz. Who do you share that list with?

Ms. Burriesci. I don't have the list with me.

Chairman Chaffetz. You're the Deputy Assistant Secretary for Screening Coordination. And in your job description, of the one paragraph on the Web site, you're supposed to be the one that's coordinating with the other departments and agencies.

When you have somebody who's a visa overstay, do you consider that a threat to the United States of America?

Ms. Burriesci. Sir, sometimes there are people who overstay that are grandmas that come over to take care of their grandchildren. I wouldn't call them a threat. I'm not saying that they shouldn't abide by the terms of their admission period, but calling them a threat is a totally different, you know, circumstance.

Chairman Chaffetz. So you just assume that everybody that

comes here on this Visa Waiver Program is not a threat?

Ms. Burriesci. I didn't say that either. Anybody who comes and overstays their period of admission here receives that final removal order, and we go after them and prioritize them based on national security and public safety first --

Chairman Chaffetz. When do they get --

Ms. Burriesci. -- using the resources that we have.

Chairman Chaffetz. When do they get that removal order?

Ms. Burriesci. I mean, you know, if you're here for VWP and it's 90 days, on the 91st day you're considered to be an overstay.

Chairman Chaffetz. You said they give them the removal order. Who gives them the removal order?

Ms. Burriesci. The removal order would come from ICE.

Chairman Chaffetz. And how many --

Ms. Burriesci. I can check on the timeframe.

Chairman Chaffetz. Will you also give us the list of how many of those have been sent out?

Is it ICE's responsibility to then remove them?

Ms. Burriesci. Yes, sir.

Chairman Chaffetz. And we'll be inquiring as to how often that happens.

I want to go back to the list. I've probably gone over my time, but when you have somebody who has then overstayed their visit, come here on the Visa Waiver Program, which law enforcement entities do you share that with? Which databases does that go

into? Can you name one?

Ms. Burriesci. So we will have within DHS who has the final removal orders. I believe it's shared with State and local, but I don't want to say that with certainty right now. So, you know, I will do my very best to get you the information that the Department has on those questions.

Chairman Chaffetz. Who is the specific person that would know? You report to? Sorry, you told me earlier. The person you report to is?

Ms. Burriesci. Assistant Secretary Seth Stodder. I'm in the Office of Policy.

Chairman Chaffetz. And that person reports to?

Ms. Burriesci. Assistant Secretary Alan Bersin.

Chairman Chaffetz. And that person reports to?

Ms. Burriesci. The Secretary of Homeland Security.

Chairman Chaffetz. Jeh Johnson.

Ms. Burriesci. Yes, sir.

Chairman Chaffetz. The request we sent was for Jeh Johnson, and Jeh Johnson sent you as the expert on these topics. So, you know, this is why I think we need help on both sides of the aisle here. But Mr. Johnson, the Secretary himself, has got to come answer these questions.

You strike me as a very nice person, but these are basic questions about the functionality here. And when we're having a congressional hearing, it is a waste of this committee's time

to send somebody who doesn't know the answers to very basic questions.

And that's why we will continue to pursue very vigorous oversight and look forward to robust discussions. You're accelerating the need for us to have multiple hearings on this.

I yield back.

Mr. DeSantis. The chairman yields back.

And we are also anticipating the responses to all the questions that have been asked and, obviously, anticipating being able to review the file for Tashfeen Malik.

[The information follows:]

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

Mr. DeSantis. So I want to thank the witnesses.

The committee stands adjourned.

[Whereupon, at 1:17 p.m., the subcommittees were adjourned.]